

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1505

S.P. 528

March 19, 2007

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### An Act To Adopt the Revised Uniform Anatomical Gift Act

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator HOBBS of York.  
Cosponsored by Senator MARRACHÉ of Kennebec.

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

2 **Sec. 1. 22 MRSA c. 710**, as amended, is repealed.

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

4 **Prefatory Note**

5 As of January, 2006 there were over 92,000 individuals on the waiting list for organ  
6 transplantation, and the list keeps growing. It is estimated that approximately 5,000  
7 individuals join the waiting list each year. *See* "Organ Donation: Opportunities for  
8 Action," Institute of Medicine of the National Academies (2006) [www.nap.edu](http://www.nap.edu). Every  
9 hour another person in the United States dies because of the lack of an organ to provide a  
10 life saving organ transplant.

11 The lack of organs results from the lack of organ donors. For example, according to  
12 the Scientific Registry of Transplant Recipients in 2005 when there were about 90,000  
13 people on the organ transplant waiting list, there were 13,091 individuals who died under  
14 the age of 70 using cardiac and brain death criteria and who were eligible to be organ  
15 donors. Of these, only 58% or 7,593 were actual donors who provided just over 23,000  
16 organs. Living donors, primarily of kidneys, contributed about 6,800 more organs.  
17 Between them about 28,000 organs were transplanted into patients on the waiting list in  
18 2005. (*See* [www.optn.org](http://www.optn.org)).

19 The 2005 data on cadaveric organ donors suggests there were 5,498 individuals who  
20 died that year that could have been donors who weren't and that had they been organ  
21 donors there would have been approximately 17,000 additional organs potentially  
22 available for transplantation. (*See generally*, [www.unos.org](http://www.unos.org) and [www.ustransplant.org](http://www.ustransplant.org)).  
23 However, these numbers to some extent are only estimates. First, they exclude  
24 individuals dying over the age of 70. Second, the data are self reported for eligible  
25 donors. Indicative of the absence of precision in this area is the report from the Institute  
26 of Medicine. According to the IOM, it has been estimated that donor-eligible deaths  
27 range between 10,500 and 16,800 per year. *See* "Organ Donation: Opportunities for  
28 Action," Institute of Medicine of the National Academies (2006) at page 27.  
29 [www.nap.edu](http://www.nap.edu) Using the 2005 figures for deceased organ donors, this would suggest that  
30 between approximately 3,000 and 9,000 decedents could have been donors but weren't.  
31 Further, if one assumes an average of three solid organs recovered from each of them,  
32 there could be between 9,000 and 27,000 more organs that might have been available to  
33 transplant into individuals on the waiting list.

34 The data for eye and tissue is, however, more encouraging. On an annual basis there  
35 are approximately 50,000 eye donors and tissue donors and over 1,000,000 ocular and  
36 tissue transplants.

37 This Revised Uniform Anatomical Gift Act ("UAGA") is promulgated by the  
38 National Conference of Commissioners on Uniform State Laws ("NCCUSL") to address  
39 in part the critical organ shortage by providing additional ways for making organ, eye,  
40 and tissue donations. The original UAGA was promulgated by NCCUSL in 1968 and

1 promptly enacted by all states. In 1987, the UAGA was revised and updated, but only 26  
2 states adopted that version. Since 1987, many states have adopted non-uniform  
3 amendments to their anatomical gift acts. The law among the various states is no longer  
4 uniform and harmonious, and the diversity of law is an impediment to transplantation.  
5 Furthermore the federal government has been increasingly active in the organ transplant  
6 process.

7 Since 1987, there also have been substantial improvements in the technology and  
8 practice of organ, eye, and tissue transplantation and therapy. And, the need for organs,  
9 eyes, and tissue for research and education has increased to assure more successful  
10 transplantations and therapies. The improvements in technology and the growing needs of  
11 the research community have correspondingly increased the need for more donors.

12 This 2006 Revised UAGA is promulgated with the substantial and active  
13 participation of the major stakeholders representing donors, recipients, doctors,  
14 procurement organizations, regulators, and others affected. The Drafting Committee held  
15 four meetings with the stakeholders beginning on Friday morning and ending Sunday  
16 noon, reading and discussing each section of the drafts word by word (Chicago,  
17 December 3-5, 2004; Philadelphia, March 18-20, 2005; Chicago, November 2-4, 2005;  
18 and Detroit, April 21-23, 2006). The following stakeholders were actively engaged in the  
19 dialogue working for a consensus that could and should be adopted on a uniform basis to  
20 facilitate the anatomical gifts of human bodies and parts: American Bar Association,  
21 American Medical Association, American Lung Association, Association of Organ  
22 Procurement Organizations, American Association of Tissue Banks, Eye Bank  
23 Association of America, Health Law Institute and Center for Race and Bioethics, Life  
24 Alaska Donor Services, Musculoskeletal Transplant Foundation, National Association of  
25 Medical Examiners, National Disease Research Interchange, National Kidney  
26 Foundation, North American Transplant Coordinators Organization, RTI Donor Services,  
27 United Network for Organ Sharing (UNOS) and United States Department of Health &  
28 Human Services. In addition, there were many who contributed their views and  
29 comments by correspondence, including the Funeral Consumers Alliance, Inc. and  
30 Funeral Ethics Organization.

31 This [act] adheres to the significant policy determinations reflected in existing  
32 anatomical gift acts. First, the [act] is designed to encourage the making of anatomical  
33 gifts. Second, the [act] is designed to honor and respect the autonomy interest of  
34 individuals to make or not to make an anatomical gift of their body or parts. Third, the  
35 [act] preserves the current anatomical gift system founded upon altruism by requiring a  
36 positive affirmation of an intent to make a gift and prohibiting the sale and purchase of  
37 organs. This [act] includes a number of provisions, discussed below, that enhance these  
38 policies.

### 39 **History of 1968 and 1987 Acts**

40 The first reported medical transplant occurred in the third century. However, medical  
41 miracles flowing from transplants are truly a modern story beginning in the first decade  
42 of the twentieth century with the first successful transplant of a cornea. But, not until  
43 three events occurred in the twentieth century, in addition to the development of surgical

1 techniques to effectuate a transplant, could transplants become a viable option to save and  
2 meaningfully extend lives.

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

11 The second event, following shortly after Dr. Christian Barnard's successful  
12 transplant of a heart in November, 1967, was this Conference's adoption of the first  
13 Uniform Anatomical Gift Act. In short order, every jurisdiction uniformly adopted the  
14 1968 Act. The most significant contribution of the 1968 Act was to create a right to  
15 donate organs, eyes, and tissue. This right was not clearly recognized at common law. By  
16 creating this right, individuals became empowered to donate their parts or their loved  
17 one's parts to save or improve the lives of others.

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

22 In 1987, a revised Uniform Anatomical Gift Act was promulgated to address changes  
23 in circumstances and in practice. Only 26 jurisdictions enacted the 1987 revision.  
24 Consequently, there is significant non-uniformity between states with the 1968 Act and  
25 those with the 1987 revisions. Neither of those acts comports with changes in federal law  
26 adopted subsequent to the 1987 Act relating to the role of hospitals and procurement  
27 organization in securing organs, eyes, and tissues for transplantation. And, both of them  
28 have impediments that are inconsistent with a policy to encourage donation.

29 The two previous anatomical gift acts, as well as this [act], adhere to an "opt in"  
30 principle as its default rule. Thus, an individual becomes a donor only if the donor or  
31 someone acting on the donor's behalf affirmatively makes an anatomical gift. The system  
32 universally adopted in this country is contrary to the system adopted in some countries,  
33 primarily in Europe, where an individual is deemed to be a donor unless the individual or  
34 another person acting on the individual's behalf "opts out." This other system is known as  
35 "presumed consent." While there are proponents of presumed consent who believe the  
36 concept of presumed consent could receive in the future a favorable reception in this  
37 country, the professional consensus appears to be not to replace the present opt-in  
38 principle at this time. *See* "Organ Donation: Opportunities in Action," Institute of  
39 Medicine of the National Academies (2006) at page 12.

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

41 This [act] is limited in scope to donations from deceased donors as a result of gifts

1 made before or after their deaths. Although recently there has been a significant increase  
2 in so-called "living donations," where a living donor immediately donates an organ  
3 (typically a kidney or a section of a liver) to a recipient, donations by living donors are  
4 not covered in this [act] because they raise distinct and difficult legal issues that are more  
5 appropriate for a separate act.

6 A majority of donors or prospective donors are candidates for donation of eyes or  
7 tissue, but only a small percentage of individuals die under circumstances that permit an  
8 anatomical gift of an organ. To procure an anatomical gift for transplantation, therapy,  
9 research, or education, a donor or prospective donor must be declared dead (*see* Uniform  
10 Determination of Death Act). In cases of potential organ donation, measures necessary to  
11 ensure the medical suitability of an organ for transplantation or therapy are administered  
12 to a patient who is dead or near death to determine if the patient could be a prospective  
13 donor.

14 Pursuant to federal law, when a donor or a patient who could be a prospective donor  
15 is dead or near death, a procurement organization, or a designee, must be notified. The  
16 organization begins to develop a medical and social history to determine whether the  
17 dying or deceased individual's body might be medically suitable for donation. If the body  
18 of a dying or deceased person might be medically suitable for donation, the procurement  
19 organization checks for evidence of a donation, if not otherwise known, and seeks  
20 consent to donation from authorized persons, if necessary. In the case of an organ, the  
21 organ procurement organization obtains from the Organ Procurement and Transplantation  
22 Network ("OPTN") a prioritized list of potential recipients from the national organ  
23 waiting list and takes the necessary steps to see that the organ finds its way to the  
24 appropriate recipient. If eye or tissue is donated, the appropriate procurement  
25 organization procures the eye or tissue and takes the necessary steps to screen, test,  
26 process, store, or distribute them as required for transplantation, therapy, research, or  
27 education. All must be done expeditiously.

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

35 Transplantation occurs across state boundaries and requires speed and efficiency if  
36 the organ is to be successfully transplanted into a recipient. There simply is no time for  
37 researching and conforming to variations of the laws among the states. Thus, uniformity  
38 of state law is highly desirable. Furthermore, the decision to be a donor is a highly  
39 personal decision of great generosity and deserves the highest respect from the law.  
40 Because current state anatomical gift laws are out of harmony with both federal  
41 procurement and allocation policies and do not fully respect the autonomy interests of  
42 donors, there is a need to harmonize state law with federal policy as well as to improve  
43 the manner in which anatomical gifts can be made and respected.

1 **Summary of the Changes in the Revised Act**

2 This revision retains the basic policy of the 1968 and 1987 anatomical gift acts by  
3 retaining and strengthening the "opt-in" system that honors the free choice of an  
4 individual to donate the individual's organ (a process known in the organ transplant  
5 community as "first person consent" or "donor designation"). This revision also preserves  
6 the right of other persons to make an anatomical gift of a decedent's organs if the  
7 decedent had not made a gift during life. And, it strengthens the right of an individual not  
8 to donate the individual's organs by signing a refusal that also bars others from making a  
9 gift of the individual's organs after the individual's death. This revision:

10 1. Honors the choice of an individual to be or not to be a donor and strengthens the  
11 language barring others from overriding a donor's decision to make an anatomical gift  
12 (Section 8);

13 2. Facilitates donations by expanding the list of those who may make an anatomical  
14 gift for another individual during that individual's lifetime to include health-care agents  
15 and, under certain circumstances, parents or guardians (Section 4);

16 3. Empowers a minor eligible under other law to apply for a driver's license to be a  
17 donor (Section 4);

18 4. Facilitates donations from a deceased individual who made no lifetime choice by  
19 adding to the list of persons who can make a gift of the deceased individual's body or  
20 parts the following persons: the person who was acting as the decedent's agent under a  
21 power of attorney for health care at the time of the decedent's death, the decedent's adult  
22 grandchildren, and an adult who exhibited special care and concern for the decedent  
23 (Section 9) and defines the meaning of "reasonably available" which is relevant to who  
24 can make an anatomical gift of a decedent's body or parts (Section 2(23));

25 5. Permits an anatomical gift by any member of a class where there is more than one  
26 person in the class so long as no objections by other class members are known and, if an  
27 objection is known, permits a majority of the members of the class who are reasonably  
28 available to make the gift without having to take account of a known objection by any  
29 class member who is not reasonably available (Section 9);

30 6. Creates numerous default rules for the interpretation of a document of gift that  
31 lacks specificity regarding either the persons to receive the gift or the purposes of the gift  
32 or both (Section 11);

33 7. Encourages and establishes standards for donor registries (Section 20);

34 8. Enables procurement organizations to gain access to documents of gifts in donor  
35 registries, medical records, and the records of a state motor vehicle department (Sections  
36 14 and 20);

37 9. Resolves the tension between a health-care directive requesting the withholding or  
38 withdrawal of life support systems and anatomical gifts by permitting measures necessary

1 to ensure the medical suitability of organs for intended transplantation or therapy to be  
2 administered (Sections 14 and 21);

3 10. Clarifies and expands the rules relating to cooperation and coordination between  
4 procurement organizations and coroners or medical examiners (Sections 22 and 23);

5 11. Recognizes anatomical gifts made under the laws of other jurisdictions (Section  
6 19); and

7 12. Updates the [act] to allow for electronic records and signatures (Section 25).

8 In addition, Section 2 provides a number of new definitions that are used in the  
9 substantive provisions of the [act] to clarify and expand the opportunities for anatomical  
10 gifts. These include: adult, agent, custodian, disinterested witness, donee, donor registry,  
11 driver's license, eye bank, guardian, know, license, minor, organ procurement  
12 organization, parent, prospective donor, reasonably available, recipient, record, sign,  
13 tissue, tissue bank, and transplant hospital.

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

21 Section 5 recognizes that, since the adoption of the previous versions of this [act],  
22 some states and many private organizations have created donor registries for the purpose  
23 of making anatomical gifts. Thus, in addition to evidencing a gift on a donor card or  
24 driver's license, this [act] allows for the making of anatomical gifts on donor registries. It  
25 also permits gifts to be made on state-issued identification cards and, under limited  
26 circumstances, to be made orally. Except for oral gifts, there is no witnessing requirement  
27 to make an anatomical gift.

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

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

37 Section 8 substantially strengthens the respect due a decision to make an anatomical  
38 gift. While the 1987 Act provided that a donor's anatomical gift was irrevocable (except  
39 by the donor), until quite recently it had been a common practice for procurement



1 organizations to seek affirmation of the gift from the donor's family. This could result in  
2 unnecessary delays in the recovery of organs as well as a reversal of a donor's donation  
3 decision. Section 8 intentionally disempowers families from making or revoking  
4 anatomical gifts in contravention of a donor's wishes. Thus, under the strengthened  
5 language of this [act], if a donor had made an anatomical gift, there is no reason to seek  
6 consent from the donor's family as they have no right to give it legally. *See* Section 8(a).  
7 Of course, that would not bar, nor should it bar, a procurement organization from  
8 advising the donor's family of the donor's express wishes, but that conversation should  
9 focus more on what procedures will be followed to carry out the donor's wishes and on  
10 answering a family's questions about the process rather than on seeking approval of the  
11 donation. A limited exception applies if the donor is a minor at the time of death. In this  
12 case, either parent may amend or revoke the donor's anatomical gift. *See* Section 8(g).

13 Section 8 also recognizes that some decisions of a donor are inherently ambiguous,  
14 making it appropriate to adopt rules that favor the making of anatomical gifts. For  
15 example, a donor's revocation of a gift of a part is not to be construed as a refusal for  
16 others to make gifts of other parts. Likewise, a donor's gift of one part is not to be  
17 construed as a refusal that would bar others from making gifts of other parts absent an  
18 express, contrary intent.

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

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

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

38 Section 11 includes two important improvements to previous versions of this [act].  
39 First, it creates a priority for transplantation or therapy over research or education when  
40 an anatomical gift is made for all four purposes in a document of gift that fails to  
41 establish a priority.

42 Second, it specifies the person to whom a part passes when the document of gift

1 merely expresses a "general intent" to be an "organ donor." This type of general  
2 designation is common on a driver's license. Under Section 11(f) a general statement of  
3 intent to be a donor results only in an anatomical gift of the donor's eyes, tissues, and  
4 organs (not the whole body) for transplantation or therapy. Since a general statement of  
5 intent to be an organ donor does not result in the making of an anatomical gift of the  
6 whole body, or any part, for research or education, more specific language is required to  
7 make such a gift.

8 Section 11(b) provides that, if an anatomical gift of the decedent's body or parts does  
9 not pass to a named person designated in a document of gift, it passes to a procurement  
10 organization typically for transplantation or therapy and possibly for research or  
11 education. Custody of a body or part that is the subject of an anatomical gift that cannot  
12 be used for any intended purpose passes to the "person under obligation to dispose of the  
13 body or parts." *See* Section 11(i).

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

18 Lastly, Section 11(k) clarifies that nothing in this [act] affects the allocation of organs  
19 for transplantation or therapy except to the extent there has been a gift to a named  
20 recipient. *See* Section 11(a)(2). The allocation of organs is administered exclusively  
21 under policies of the Organ Procurement and Transplantation Network.

22 In part, Section 14 has been redrafted to accord with controlling federal law when  
23 applicable. The federal rules require hospitals to notify an organ procurement  
24 organization or third party designated by the organ procurement organization of an  
25 individual whose death is imminent or who has died in the hospital to increase donation  
26 opportunity, and thus, transplantation. *See* 42 CFR § 482.45 (Medicare and Medicaid  
27 Programs: Conditions of Participation: Identification of Potential Organ, Tissue, and Eye  
28 Donors and Transplant Hospitals' Provision of Transplant-Related Data). The right of the  
29 procurement organization to inspect a patient's medical records in Section 14(e) does not  
30 violate HIPAA. *See* 45 CFR § 164.512(h) ("A covered entity may use or disclose  
31 protected health information to organ procurement organizations or other entities engaged  
32 in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the  
33 purpose of facilitating organ, eye, or tissue donation and transplantation"). Section 14(c)  
34 permits measures necessary to ensure the medical suitability of parts to be administered  
35 to a patient who is being evaluated to determine whether the patient has organs that are  
36 medically suitable for transplantation.

37 Section 17 and Section 18 deal with liability and immunity, respectively. (Section 16,  
38 dealing with the sale of parts, also provides for potential liabilities but is essentially the  
39 same as prior law). Section 17 includes a new provision establishing criminal sanctions  
40 for falsifying the making, amending, or revoking of an anatomical gift. Section 18, in  
41 substance, is the same as the 1987 Act providing immunity for "good faith" efforts to  
42 comply with this [act]. However, while the [act] contains no provisions relating to bad  
43 faith it is important to note that other laws of the state and federal governments may

1 provide for further remedies and sanctions for bad faith, including those under regulatory  
2 rules, licensing requirements, Unfair and Deceptive Practices acts, and the common law.

3 Section 18(c) provides that in determining whether an individual has a right to make  
4 an anatomical gift under Section 9, a person, such as an organ procurement organization,  
5 may rely on the individual's representation regarding the individual's relationship to the  
6 donor or prospective donor.

7 Section 19 sets forth rules relating to the validity of documents of gift executed  
8 outside of the state while providing that any document of gift shall be interpreted in  
9 accordance with the laws of the state.

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

21 Section 21 creates a default rule to adjust the tension that might exist between  
22 preserving organs to assure their medical suitability for transplantation or therapy and the  
23 expression of intent by a prospective donor in either a declaration or advance health-care  
24 directive not to have life prolonged by use of life support systems. The default rule under  
25 this [act] is that measures necessary to ensure the medical suitability of an organ for  
26 transplantation or therapy may not be withheld or withdrawn from the prospective donor.  
27 A prospective donor could expressly provide otherwise in the declaration or advance  
28 health-care directive.

29 Sections 22 and 23 represent a complete revision of the relationship of the [coroner]  
30 [medical examiner] to the anatomical gift process. Previous versions of this [act]  
31 permitted the [coroner] [medical examiner], under limited circumstances, to make  
32 anatomical gifts of the eyes of a decedent in the [coroner's] [medical examiner's]  
33 possession. In light of a series of Section 1983 lawsuits in which the [coroner's] [medical  
34 examiner's] actions were held to violate the property rights of surviving family members,  
35 *see, e.g., Brotherton v. Cleveland*, 923 F.2d 477 (6<sup>th</sup> Cir. 1991), the authority of the  
36 [coroner] [medical examiner] to make anatomical gifts was deleted from this [act]. Parts,  
37 with the rare exception discussed in the comments to Section 9, can be recovered for the  
38 purpose of transplantation, therapy, research, or education from a decedent whose body is  
39 under the jurisdiction of the [coroner] [medical examiner] only if there was an anatomical  
40 gift of those parts under Section 5 or Section 10 of this [act].

1 This [act] includes a series of new provisions in Sections 22 and 23 relating to the  
2 relationship between the [coroner] [medical examiner] and procurement organizations.  
3 These provisions should encourage meaningful cooperation between these groups in  
4 hopes of increasing the number of anatomical gifts. Importantly, the section does not  
5 permit a [coroner] [medical examiner] to make an anatomical gift.

## 6 CHAPTER 710-B

### 7 REVISED UNIFORM ANATOMICAL GIFT ACT

#### 8 §2941. Short title

9 This chapter may be known and cited as "the Revised Uniform Anatomical Gift Act."

#### 10 §2942. Definitions

11 As used in this chapter, unless the context otherwise indicates, the following terms  
12 have the following meanings.

##### 13 1. Agent. "Agent" means an individual:

14 A. Authorized to make health care decisions on the principal's behalf by a power of  
15 attorney for health care; or

16 B. Expressly authorized to make an anatomical gift on the principal's behalf by any  
17 other record signed by the principal.

18 2. Anatomical gift. "Anatomical gift" means a donation of all or part of a human  
19 body to take effect after the donor's death for the purposes of transplantation, therapy,  
20 research or education.

21 3. Decedent. "Decedent" means a deceased individual whose body or part is or may  
22 be the source of an anatomical gift. "Decedent" includes a stillborn infant and, subject to  
23 restrictions imposed by law other than this chapter, a fetus.

24 4. Disinterested witness. "Disinterested witness" means a witness other than the  
25 spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who  
26 makes, amends, revokes or refuses to make an anatomical gift, or another adult who  
27 exhibited special care and concern for the individual. "Disinterested witness" does not  
28 include a person to which an anatomical gift could pass under section 2951.

29 5. Document of gift. "Document of gift" means a donor card or other record used to  
30 make an anatomical gift. "Document of gift" includes a statement or symbol on a driver's  
31 license, identification card or donor registry.

32 6. Donor. "Donor" means an individual whose body or part is the subject of an  
33 anatomical gift.

34 7. Donor registry. "Donor registry" means a database that contains records of  
35 anatomical gifts and amendments to or revocations of anatomical gifts.

- 1        **8. Driver's license.** "Driver's license" means a license or permit issued by the  
2 Secretary of State to operate a vehicle whether or not conditions are attached to the  
3 license or permit.
- 4        **9. Eye bank.** "Eye bank" means a person that is licensed, accredited or regulated  
5 under federal or state law to engage in the recovery, screening, testing, processing,  
6 storage or distribution of human eyes or portions of human eyes.
- 7        **10. Guardian.** "Guardian" means a person appointed by a court to make decisions  
8 regarding the support, care, education, health and welfare of an individual. "Guardian"  
9 does not include a guardian ad litem.
- 10       **11. Hospital.** "Hospital" means a facility licensed as a hospital under the law of any  
11 state or a facility operated as a hospital by the United States, a state or a subdivision of a  
12 state.
- 13       **12. Identification card.** "Identification card" means an identification card issued by  
14 the Secretary of State.
- 15       **13. Know.** "Know" means to have actual knowledge.
- 16       **14. Organ procurement organization.** "Organ procurement organization" means a  
17 person designated by the United States Secretary of Health and Human Services as an  
18 organ procurement organization.
- 19       **15. Parent.** "Parent" means a parent whose parental rights have not been terminated.
- 20       **16. Part.** "Part" means an organ, an eye or tissue of a human being. "Part" does not  
21 include the whole body.
- 22       **17. Person.** "Person" means an individual, corporation, business trust, estate, trust,  
23 partnership, limited liability company, association, joint venture, public corporation,  
24 government or governmental subdivision, agency or instrumentality or any other legal or  
25 commercial entity.
- 26       **18. Physician.** "Physician" means an individual authorized to practice medicine or  
27 osteopathy under the law of any state.
- 28       **19. Procurement organization.** "Procurement organization" means an eye bank,  
29 organ procurement organization or tissue bank.
- 30       **20. Prospective donor.** "Prospective donor" means an individual who is dead or  
31 near death and has been determined by a procurement organization to have a part that  
32 could be medically suitable for transplantation, therapy, research or education.  
33 "Prospective donor" does not include an individual who has made a refusal.
- 34       **21. Reasonably available.** "Reasonably available" means able to be contacted by a  
35 procurement organization without undue effort and willing and able to act in a timely  
36 manner consistent with existing medical criteria necessary for the making of an  
37 anatomical gift.

1 22. Recipient. "Recipient" means an individual into whose body a decedent's part  
2 has been or is intended to be transplanted.

3 23. Record. "Record" means information that is inscribed on a tangible medium or  
4 that is stored in an electronic or other medium and is retrievable in perceivable form.

5 24. Refusal. "Refusal" means a record created under section 2947 that expressly  
6 states an intent to bar other persons from making an anatomical gift of an individual's  
7 body or part.

8 25. Sign. "Sign" means, with the present intent to authenticate or adopt a record:

9 A. To execute or adopt a tangible symbol; or

10 B. To attach or logically associate with the record an electronic symbol, sound or  
11 process.

12 26. State. "State" means a state of the United States, the District of Columbia,  
13 Puerto Rico, the United States Virgin Islands or any territory or insular possession subject  
14 to the jurisdiction of the United States.

15 27. Technician. "Technician" means an individual determined to be qualified to  
16 remove or process parts by an appropriate organization that is licensed, accredited or  
17 regulated under federal or state law. "Technician" includes an enucleator.

18 28. Tissue. "Tissue" means a portion of the human body other than an organ or an  
19 eye. "Tissue" does not include blood unless the blood is donated for purposes of research  
20 or education.

21 29. Tissue bank. "Tissue bank" means a person that is licensed, accredited or  
22 regulated under federal or state law to engage in the recovery, screening, testing,  
23 processing, storage or distribution of tissue.

24 30. Transplant hospital. "Transplant hospital" means a hospital that furnishes  
25 organ transplants and other medical and surgical specialty services required for the care  
26 of transplant patients.

27 **Uniform Comment**

28 (This is Section 2 of the Revised Uniform Anatomical Gift Act (2006).)

29 "Agent" (paragraph (2)) is an individual who, under certain circumstances, can make  
30 an anatomical gift on the principal's behalf. An agent is empowered to make a gift if the  
31 agent is authorized by a power of attorney for health care to make health-care decisions  
32 on the principal's behalf. Thus, this [act], independent of any other law, empowers an  
33 agent acting under a power of attorney for health care to make an anatomical gift on the  
34 principal's behalf. It is unnecessary that states adopting this [act] amend their power of  
35 attorney for health care statutes to specifically empower agents to make anatomical gifts  
36 on behalf of principals. On the other hand, a state may choose to amend its health-care  
37 power of attorney statute in order that all of the agent's powers, including the power to  
38 make an anatomical gift, are located and visible in one place setting forth the powers of a

1 health-care agent. Even though this [act] enables an agent acting under a power of  
2 attorney for health care to make an anatomical gift, if the principal prohibits the agent  
3 from making an anatomical gift of the principal's parts, the agent would have no authority  
4 to do so. See Section 4(2).

5 An agent also may be designated by a record, other than a power of attorney for  
6 health care, which authorizes the agent to make an anatomical gift. This would permit a  
7 principal to empower one individual to make health-care decisions and another individual  
8 to make anatomical gift decisions. In light of the definition of record, this authority could  
9 be expressed in a financial power of attorney.

10 "Anatomical gift" (paragraph (3)) means a gift that takes effect after the donor's  
11 death. Thus, an "anatomical gift" does not include a gift of an organ from a living donor  
12 to a living recipient.

13 "Decedent" (paragraph (4)) is defined as it was under prior versions of this [act] to  
14 include both stillborns and fetuses. A fetus, by definition, is not an embryo and nothing  
15 in this [act] allows for an anatomical gift of an embryo. Under other law fetuses can be  
16 used for research. *See*, 42 U.S. C. § 289g-1 & 289g-2; 42 CFR § 46.201.

17 By including stillborns and fetuses in the definition of "decedent," this [act] assures  
18 that stillborns and fetuses continue to receive the statutory protections conferred by this  
19 [act]; namely that their bodies or parts cannot be used for transplantation, therapy,  
20 research, or education without the same appropriate consents afforded other prospective  
21 donors. The definition of decedent does not broaden the scope of available transplant or  
22 research subjects or techniques. Although the needs of research and transplantation may  
23 have changed and expanded since the original 1968 Act was drafted, the scope of this  
24 [act] with regard to the definition of those who may be a source of an anatomical gift has  
25 neither changed nor expanded. By its terms, this [act] is silent on the issue of the use or  
26 donation of blastocytes and embryos, neither authorizing nor prohibiting their donation or  
27 use. Similarly, this [act] is silent on the nature of the research to be performed and  
28 provides no authorization or prohibition for somatic cell nuclear transfer or other specific  
29 research techniques. The complicated legal, scientific, moral, and ethical issues which  
30 may arise in the consideration of such research is, or should be, dealt with in separate  
31 statutes and policies. Thus, nothing in this [act] affects embryonic stem cell research.  
32 However, for jurisdictions that might prefer a more restrictive definition in the second  
33 sentence of the definition of "decedent," the following language is suggested: "The term  
34 does not include a blastocyst, embryo, or fetus that is the subject of an induced abortion."

35 "Disinterested witness" (paragraph (5)) means a witness other than those listed in the  
36 paragraph. Under Sections 5 and 6 anatomical gifts may be made or revoked. Under  
37 Section 7 a person may also make or revoke a refusal. In most circumstances these acts  
38 must be evidenced by a record. However, in limited circumstances they can be evidenced  
39 by oral statements to at least two adult witnesses. In those circumstances at least one of  
40 the witnesses must be a disinterested witness.

41 "Document of gift" (paragraph (6)) includes a donor card or any other record. It also  
42 includes a donor registry (paragraph (8)), a driver's license (paragraph (9)), and an

1 identification card (paragraph (13)). While a donor card is a record, the reference to  
2 donor cards had been specifically retained because of the wide acceptance of that concept  
3 in our culture. Prior versions of this [act] also expressly referred to a will in the definition  
4 of a document of gift. The omission in this [act] of a will in the definition of a document  
5 of gift does not mean a will is not a document of gift. Rather, the "will" is subsumed in  
6 the word "record." Where there is a need in this [act] to specially treat wills as  
7 documents of gift, the will is singled out from other documents of gift.

8 A statement or symbol on a driver's license or donor registry is a document of gift; it  
9 is not merely an expression of intent to make a gift. Therefore, where there is such a  
10 statement or symbol, no other document of gift is necessary to evidence the making of an  
11 anatomical gift. Potential donors utilizing records other than a driver's license or a donor  
12 registry to make an anatomical gift should be strongly encouraged to make their gifts on a  
13 driver's license or donor registry, as gifts on a license or registry are more likely to be  
14 discovered when the donor is dead or near death.

15 Under Section 5(b) a donor can make an anatomical gift by authorizing the persons  
16 who maintains a donor registry to include on the registry a statement or symbol that the  
17 donor has made an anatomical gift. By adding a "donor registry" as a device for making  
18 an anatomical gift, this [act] recognizes the increasing use of donor registries to make  
19 anatomical gifts. The use of donor registries was not contemplated when the previous  
20 versions of this act were adopted. Today, however, they have assumed increased  
21 importance and in time may come to dominate how anatomical gifts are made. While the  
22 format of donor registries differ, generally they allow for the making of an anatomical  
23 gift of one or more parts and permit that gift to be made over the internet. No known  
24 donor registry provides for a refusal to make an anatomical gift, and this [act] does not  
25 require that they do so. The person who maintains a donor registry may, if it chooses,  
26 follow up an electronic registration by sending the donor a card to sign. However, that is  
27 not legally required by this [act] to make an effective anatomical gift.

28 "Donor" (paragraph (7)) means the individual whose body or part is the subject of an  
29 anatomical gift. Thus, an individual who signs a donor card or authorizes a symbol to be  
30 placed on a driver's license or donor registry evidencing an anatomical gift is a donor  
31 even though the part donated will not be removed from the donor until the donor dies.  
32 Likewise, if the family of a decedent who did not make an anatomical gift during life  
33 donates a part of the decedent, that decedent is a donor. Thus, "donor" refers to a living  
34 individual who made an anatomical gift or on whose behalf an anatomical gift was made  
35 to take effect in the future. The term also includes a decedent whose body or part is the  
36 subject of an anatomical gift. Anatomical gifts by a donor, as well as amendments,  
37 revocations, and refusals, may preclude the ability of others to make or revoke anatomical  
38 gifts on behalf of the donor. *See* Sections 7 and 8.

39 "Donor registry" (paragraph (8)) means a database containing records of anatomical  
40 gifts. The concept of the registry is new to this version of the anatomical gift act. Many  
41 states now have donor registries. Most of them are operated by private organizations,  
42 such as a procurement organization (paragraph (21)) while some are operated by the state.  
43 Section 20 of this [act] authorizes states to either establish or contract for the  
44 establishment of a donor registry. Donor registries, like driver's licenses, are very



1 effective devices to record the making of an anatomical gift. The making of an  
2 anatomical gift by these devices assures that the evidence of a gift is always available,  
3 unlike the traditional donor card which can often be lost. Furthermore, they are easily  
4 accessible by procurement organizations.

5 "Driver's license" (paragraph (9)) includes both driver's licenses for which adults  
6 qualify, as well as licenses or permits issued to minors whether denoted "temporary  
7 permit," "permit," or "learner's permit," or something else. State laws vary widely on  
8 how young an individual under the age of 18 can be to obtain a driver's license. For  
9 example, it is not uncommon for a learner's permit to be issued to a 16-year-old  
10 individual. And, in some states licenses or permits can be issued to 14-year-olds for the  
11 purpose of driving only certain types of motorized vehicles, such as farm equipment. The  
12 definition of "driver's license" is broad enough to include all of these. Furthermore, under  
13 the definition, a condition, such as that the holder must be accompanied by an adult or the  
14 holder can drive only certain types of vehicles, does not prevent the license or permit  
15 from being considered a "driver's license" under this [act].

16 Under Section 4 if a minor is of an age that the minor would be entitled to obtain a  
17 driver's license, the minor can make an anatomical gift even though the minor does not  
18 actually apply for a license. Thus, a minor who could apply for a permit could make an  
19 anatomical gift by another means, such as a donor card or donor registry. Furthermore, if  
20 a minor acquires a license on which the minor has made an anatomical gift, the minor  
21 would not have to re-apply for a driver's license when attaining age 18 for the gift to be  
22 effective.

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

25 "Guardian" (paragraph (11)) means any person judicially appointed to make decisions  
26 for the support, care, education, health, or welfare of the ward. The intent is to exclude  
27 guardians ad litem or temporary guardians who would not have an expected long-term  
28 relationship to the ward.

29 "Identification card" (paragraph (13)) means an identification card issued by the  
30 [state department of motor vehicles]. Some individuals desire an identification card  
31 rather than a driver's license. These individuals could make an anatomical gift by  
32 authorizing a statement or symbol to be put on the card. While this [act] does not require  
33 that space be provided on the card for that purpose, it is anticipated that states will design  
34 these cards in ways to permit the making of an anatomical gift.

35 "Know" (paragraph (14)) means actual knowledge. Thus, it does not mean imputed  
36 knowledge. When imputed knowledge is relevant under any section of this [act], the  
37 section expressly so provides. *See, e.g.,* section 11(j).

38 "Parent" (paragraph (17)) means a parent whose parental rights have not been  
39 terminated. An adopting parent is a parent. On the other hand, a stepparent or judicially  
40 appointed guardian not otherwise by law designated as the child's parent is not a parent.

1 "Part" (paragraph (18)) means organ, eye, or tissue. While this definition is shorter  
2 than the definition in the 1987 Act, it is functionally the same because all parts of the  
3 human body, including bones and fluids, are encompassed within the definition. The  
4 definition excludes the whole body.

5 "Prospective donor" (paragraph (22)) means an individual who is dead or near death  
6 and has been determined to have one or more parts that could be medically suitable for  
7 transplantation, therapy, research, or education. The term includes an individual who  
8 made an anatomical gift during life and, therefore, is a donor. The term also includes a  
9 non-donor individual at or near the time of death with parts that are medically suitable for  
10 donation who could become a donor if the individual's family made an anatomical gift  
11 under Section 9. The term does not include an individual who made a refusal as the  
12 refusal bars other persons from making an anatomical gift on that individual's behalf.

13 "Reasonably available" (paragraph (23)) is defined in a manner similar to that in the  
14 Uniform Health-Care Decisions Act. A decision to make an anatomical gift, particularly  
15 of an organ, is extremely time sensitive. Life-saving organs may be forfeited if persons  
16 with a priority to make an anatomical gift under Section 9 cannot be located. Physical  
17 presence, however, is not required to be "reasonably available." An individual is  
18 "reasonably available" if the individual can be contacted without undue effort. Also, the  
19 concept assumes that an individual is willing to act in a timely manner to permit the  
20 successful recovery of organs. An individual who is unwilling to make a decision to  
21 either donate or refuse to donate in a timely manner is not considered to be "reasonably  
22 available."

23 "Tissue" (paragraph (30)), as defined in this act, includes bone. The definition  
24 excludes blood unless donated for research or education. Blood is not obtained from  
25 deceased persons for purposes of transplantation or therapy. Furthermore, blood banks  
26 are not treated as tissue banks under other law. Accordingly, it is appropriate to exclude  
27 blood from the operation of this [act] except when donated for purposes of research or  
28 education.

29 "Agent" (paragraph (2)) is an individual who, under certain circumstances, can make  
30 an anatomical gift on the principal's behalf. An agent is empowered to make a gift if the  
31 agent is authorized by a power of attorney for health care to make health-care decisions  
32 on the principal's behalf. Thus, this [act], independent of any other law, empowers an  
33 agent acting under a power of attorney for health care to make an anatomical gift on the  
34 principal's behalf. It is unnecessary that states adopting this [act] amend their power of  
35 attorney for health care statutes to specifically empower agents to make anatomical gifts  
36 on behalf of principals. On the other hand, a state may choose to amend its health-care  
37 power of attorney statute in order that all of the agent's powers, including the power to  
38 make an anatomical gift, are located and visible in one place setting forth the powers of a  
39 health-care agent. Even though this [act] enables an agent acting under a power of  
40 attorney for health care to make an anatomical gift, if the principal prohibits the agent  
41 from making an anatomical gift of the principal's parts, the agent would have no authority  
42 to do so. See Section 4(2).

43 An agent also may be designated by a record, other than a power of attorney for

1 health care, which authorizes the agent to make an anatomical gift. This would permit a  
2 principal to empower one individual to make health-care decisions and another individual  
3 to make anatomical gift decisions. In light of the definition of record, this authority could  
4 be expressed in a financial power of attorney.

5 "Anatomical gift" (paragraph (3)) means a gift that takes effect after the donor's  
6 death. Thus, an "anatomical gift" does not include a gift of an organ from a living donor  
7 to a living recipient.

8 "Decedent" (paragraph (4)) is defined as it was under prior versions of this [act] to  
9 include both stillborns and fetuses. A fetus, by definition, is not an embryo and nothing  
10 in this [act] allows for an anatomical gift of an embryo. Under other law fetuses can be  
11 used for research. *See*, 42 U.S. C. § 289g-1 & 289g-2; 42 CFR § 46.201.

12 By including stillborns and fetuses in the definition of "decedent," this [act] assures  
13 that stillborns and fetuses continue to receive the statutory protections conferred by this  
14 [act]; namely that their bodies or parts cannot be used for transplantation, therapy,  
15 research, or education without the same appropriate consents afforded other prospective  
16 donors. The definition of decedent does not broaden the scope of available transplant or  
17 research subjects or techniques. Although the needs of research and transplantation may  
18 have changed and expanded since the original 1968 Act was drafted, the scope of this  
19 [act] with regard to the definition of those who may be a source of an anatomical gift has  
20 neither changed nor expanded. By its terms, this [act] is silent on the issue of the use or  
21 donation of blastocytes and embryos, neither authorizing nor prohibiting their donation or  
22 use. Similarly, this [act] is silent on the nature of the research to be performed and  
23 provides no authorization or prohibition for somatic cell nuclear transfer or other specific  
24 research techniques. The complicated legal, scientific, moral, and ethical issues which  
25 may arise in the consideration of such research is, or should be, dealt with in separate  
26 statutes and policies. Thus, nothing in this [act] affects embryonic stem cell research.  
27 However, for jurisdictions that might prefer a more restrictive definition in the second  
28 sentence of the definition of "decedent," the following language is suggested: "The term  
29 does not include a blastocyst, embryo, or fetus that is the subject of an induced abortion."

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

36 "Document of gift" (paragraph (6)) includes a donor card or any other record. It also  
37 includes a donor registry (paragraph (8)), a driver's license (paragraph (9)), and an  
38 identification card (paragraph (13)). While a donor card is a record, the reference to  
39 donor cards had been specifically retained because of the wide acceptance of that concept  
40 in our culture. Prior versions of this [act] also expressly referred to a will in the definition  
41 of a document of gift. The omission in this [act] of a will in the definition of a document  
42 of gift does not mean a will is not a document of gift. Rather, the "will" is subsumed in  
43 the word "record." Where there is a need in this [act] to specially treat wills as

1 documents of gift, the will is singled out from other documents of gift.

2 A statement or symbol on a driver's license or donor registry is a document of gift; it  
3 is not merely an expression of intent to make a gift. Therefore, where there is such a  
4 statement or symbol, no other document of gift is necessary to evidence the making of an  
5 anatomical gift. Potential donors utilizing records other than a driver's license or a donor  
6 registry to make an anatomical gift should be strongly encouraged to make their gifts on a  
7 driver's license or donor registry, as gifts on a license or registry are more likely to be  
8 discovered when the donor is dead or near death.

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

22 "Donor" (paragraph (7)) means the individual whose body or part is the subject of an  
23 anatomical gift. Thus, an individual who signs a donor card or authorizes a symbol to be  
24 placed on a driver's license or donor registry evidencing an anatomical gift is a donor  
25 even though the part donated will not be removed from the donor until the donor dies.  
26 Likewise, if the family of a decedent who did not make an anatomical gift during life  
27 donates a part of the decedent, that decedent is a donor. Thus, "donor" refers to a living  
28 individual who made an anatomical gift or on whose behalf an anatomical gift was made  
29 to take effect in the future. The term also includes a decedent whose body or part is the  
30 subject of an anatomical gift. Anatomical gifts by a donor, as well as amendments,  
31 revocations, and refusals, may preclude the ability of others to make or revoke anatomical  
32 gifts on behalf of the donor. *See* Sections 7 and 8.

33 "Donor registry" (paragraph (8)) means a database containing records of anatomical  
34 gifts. The concept of the registry is new to this version of the anatomical gift act. Many  
35 states now have donor registries. Most of them are operated by private organizations,  
36 such as a procurement organization (paragraph (21)) while some are operated by the state.  
37 Section 20 of this [act] authorizes states to either establish or contract for the  
38 establishment of a donor registry. Donor registries, like driver's licenses, are very  
39 effective devices to record the making of an anatomical gift. The making of an  
40 anatomical gift by these devices assures that the evidence of a gift is always available,  
41 unlike the traditional donor card which can often be lost. Furthermore, they are easily  
42 accessible by procurement organizations.

43 "Driver's license" (paragraph (9)) includes both driver's licenses for which adults

1 qualify, as well as licenses or permits issued to minors whether denoted "temporary  
2 permit," "permit," or "learner's permit," or something else. State laws vary widely on  
3 how young an individual under the age of 18 can be to obtain a driver's license. For  
4 example, it is not uncommon for a learner's permit to be issued to a 16-year-old  
5 individual. And, in some states licenses or permits can be issued to 14-year-olds for the  
6 purpose of driving only certain types of motorized vehicles, such as farm equipment. The  
7 definition of "driver's license" is broad enough to include all of these. Furthermore, under  
8 the definition, a condition, such as that the holder must be accompanied by an adult or the  
9 holder can drive only certain types of vehicles, does not prevent the license or permit  
10 from being considered a "driver's license" under this [act].

11 Under Section 4 if a minor is of an age that the minor would be entitled to obtain a  
12 driver's license, the minor can make an anatomical gift even though the minor does not  
13 actually apply for a license. Thus, a minor who could apply for a permit could make an  
14 anatomical gift by another means, such as a donor card or donor registry. Furthermore, if  
15 a minor acquires a license on which the minor has made an anatomical gift, the minor  
16 would not have to re-apply for a driver's license when attaining age 18 for the gift to be  
17 effective.

18 This [act], however, does not require that licenses provide space for a notation that  
19 the holder is a donor. That mandate, if it exists, is left to other law.

20 "Guardian" (paragraph (11)) means any person judicially appointed to make decisions  
21 for the support, care, education, health, or welfare of the ward. The intent is to exclude  
22 guardians ad litem or temporary guardians who would not have an expected long-term  
23 relationship to the ward.

24 "Identification card" (paragraph (13)) means an identification card issued by the  
25 [state department of motor vehicles]. Some individuals desire an identification card  
26 rather than a driver's license. These individuals could make an anatomical gift by  
27 authorizing a statement or symbol to be put on the card. While this [act] does not require  
28 that space be provided on the card for that purpose, it is anticipated that states will design  
29 these cards in ways to permit the making of an anatomical gift.

30 "Know" (paragraph (14)) means actual knowledge. Thus, it does not mean imputed  
31 knowledge. When imputed knowledge is relevant under any section of this [act], the  
32 section expressly so provides. *See, e.g.,* section 11(j).

33 "Parent" (paragraph (17)) means a parent whose parental rights have not been  
34 terminated. An adopting parent is a parent. On the other hand, a stepparent or judicially  
35 appointed guardian not otherwise by law designated as the child's parent is not a parent.

36 "Part" (paragraph (18)) means organ, eye, or tissue. While this definition is shorter  
37 than the definition in the 1987 Act, it is functionally the same because all parts of the  
38 human body, including bones and fluids, are encompassed within the definition. The  
39 definition excludes the whole body.

40 "Prospective donor" (paragraph (22)) means an individual who is dead or near death

1 and has been determined to have one or more parts that could be medically suitable for  
2 transplantation, therapy, research, or education. The term includes an individual who  
3 made an anatomical gift during life and, therefore, is a donor. The term also includes a  
4 non-donor individual at or near the time of death with parts that are medically suitable for  
5 donation who could become a donor if the individual's family made an anatomical gift  
6 under Section 9. The term does not include an individual who made a refusal as the  
7 refusal bars other persons from making an anatomical gift on that individual's behalf.

8 "Reasonably available" (paragraph (23)) is defined in a manner similar to that in the  
9 Uniform Health-Care Decisions Act. A decision to make an anatomical gift, particularly  
10 of an organ, is extremely time sensitive. Life-saving organs may be forfeited if persons  
11 with a priority to make an anatomical gift under Section 9 cannot be located. Physical  
12 presence, however, is not required to be "reasonably available." An individual is  
13 "reasonably available" if the individual can be contacted without undue effort. Also, the  
14 concept assumes that an individual is willing to act in a timely manner to permit the  
15 successful recovery of organs. An individual who is unwilling to make a decision to  
16 either donate or refuse to donate in a timely manner is not considered to be "reasonably  
17 available."

18 "Tissue" (paragraph (30)), as defined in this act, includes bone. The definition  
19 excludes blood unless donated for research or education. Blood is not obtained from  
20 deceased persons for purposes of transplantation or therapy. Furthermore, blood banks  
21 are not treated as tissue banks under other law. Accordingly, it is appropriate to exclude  
22 blood from the operation of this [act] except when donated for purposes of research or  
23 education.

#### 24 **§2943. Applicability**

25 This chapter applies to an anatomical gift or amendment to, revocation of or refusal  
26 to make an anatomical gift, whenever made.

#### 27 **§2944. Who may make anatomical gift before donor's death**

28 Subject to section 2948, an anatomical gift of a donor's body or part may be made  
29 during the life of the donor for the purpose of transplantation, therapy, research or  
30 education in the manner provided in section 2945 by:

31 **1. Donor.** The donor, if the donor is at least 18 years of age or is under 18 years of  
32 age and is:

33 A. An emancipated minor; or

34 B. Authorized under state law to apply for a driver's license because the donor is at  
35 least 16 years of age;

36 **2. Agent of donor.** An agent of the donor, unless the power of attorney for health  
37 care or other record prohibits the agent from making an anatomical gift;

38 **3. Parent of the donor.** A parent of the donor, if the donor is under 18 years of age  
39 and not emancipated; or

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**4. Guardian of donor. The donor's guardian.**

**Uniform Comment**

(This is Section 4 of the Revised Uniform Anatomical Gift Act (2006).)

Structurally, this [act] includes within Sections 4 through 8 provisions that were included in Section 2 of the 1987 Act. Section 4 relates to who may make an anatomical gift before a donor dies, Section 5 to the manner in which an anatomical gift may be made, Section 6 to the amending and revoking of an anatomical gift, Section 7 to the refusal to make an anatomical gift, and Section 8 to the effect of gifts, amendments, and revocations on the ability of others to make an anatomical gift.

Like the predecessor acts, this [act] provides that an individual may make an anatomical gift of the individual's body or part if the individual is an adult. This [act], however, expands prior law in a number of ways.

In most states a minor, under limited circumstances, can apply for a driver's license. The minor might wish to be a donor. As a policy matter, if the minor is old enough to drive a vehicle the minor should be old enough to make an anatomical gift. Thus, this [act] provides that a minor who could obtain a driver's license is empowered to make an anatomical gift whether on a driver's license or other document of gift. On the other hand, if the minor donor dies under the age of 18, it seems appropriate that the minor's parents should be able to revoke the gift. *See* Section 8(g). Because the minor's parents cannot revoke the anatomical gift if the minor donor later dies over the age of 18, there is no necessity under this [act] for the minor donor to confirm that anatomical gift after reaching 18. Thus, in a state that provides that a license issued to a minor is good for five years and the minor applies for the license at age 17, the minor can make an anatomical gift on the driver's license and need not reaffirm the gift for another five years. Furthermore, once the minor reaches age 18, the minor's parents cannot revoke the gift.

Section 4 expands prior law in other important respects. It permits anatomical gifts by an emancipated minor. The act does not define "emancipated minor," although a common example would be a married minor. State laws vary regarding the definition of an emancipated minor. By not defining the phrase in this [act], the phrase is effectively defined by other law of the state.

Section 4 expressly empowers an anatomical gift to be made on behalf of an individual by that individual's agent or a parent, if that individual is an unemancipated minor, or by a guardian.

An anatomical gift by an agent, parent, or guardian remains in effect until such time as amended or revoked by an agent, parent, or guardian, or by the donor on whose behalf the gift was made. For example, if a parent makes an anatomical gift for a minor and the parent does not revoke that gift before the minor reaches age 18 or becomes emancipated, the anatomical gift remains in effect until such time as it is altered by the donor or by the donor's agent or guardian. While agents, parents, and guardians can make an anatomical gift, they can not sign a refusal under Section 7 on their principal's or ward's behalf. A

1 refusal can only be made by that individual whose part or body might otherwise have  
2 been the subject of an anatomical gift.

3 As noted in the comments to the definitions, an agent acting under a power of  
4 attorney for health care is authorized merely by that designation to make an anatomical  
5 gift on the principal's behalf. If the principal does not wish to authorize the agent acting  
6 under a power of attorney for health care to make that decision, the power must include  
7 language to expressly negate that authority. *See* Section 4(2). Conversely, if the agent is  
8 acting under another record, such as a financial power of attorney, the agent would be  
9 empowered to make an anatomical gift only if that authority was expressly conferred in  
10 the record. *See* Section 2(2)(B).

11 Section 4 specifically delineates the four purposes for which an anatomical gift may  
12 be made, namely, transplantation, therapy, research or education. The terms  
13 "transplantation", "therapy", "research" and "education" are not defined in this [act].  
14 Rather, they are defined by their common usage in the communities to which they apply.  
15 In general terms, transplantation refers to the removal and grafting of one individual's  
16 body part into the body of another individual. Research is a process of testing and  
17 observing, the goal of which is to obtain generalizable knowledge, while therapy involves  
18 the processing and use of a donated part to develop and provide amelioration or treatment  
19 for a disease or condition. Education posits the use of the whole body or parts to teach  
20 medical professionals and others about human anatomy and its characteristics.

21 **§2945. Manner of making anatomical gift before donor's death**

22 **1. Donor.** A donor may make an anatomical gift:

23 A. By authorizing a statement or symbol indicating that the donor has made an  
24 anatomical gift to be imprinted on the donor's driver's license or identification card;

25 B. In a will; or

26 C. During a terminal illness or injury of the donor, by any form of communication  
27 addressed to at least 2 other individuals who are at least 18 years of age, one of whom  
28 is a disinterested witness.

29 **2. Donor or other authorized person.** A donor or other person authorized to make  
30 an anatomical gift under section 2944 may make a gift by a donor card or other record  
31 signed by the donor or other person making the gift or by authorizing that a statement or  
32 symbol indicating that the donor has made an anatomical gift be included on a donor  
33 registry. If the donor or other person is physically unable to sign a record, the record may  
34 be signed by another individual at the direction of the donor or the other person and must:

35 A. Be witnessed by at least 2 other individuals who are at least 18 years of age, one  
36 of whom is a disinterested witness, who have signed at the request of the donor or the  
37 other person; and

38 B. State that it has been signed and witnessed as provided in paragraph A.



1 3. Anatomical gift not invalidated. Revocation, suspension, expiration or  
2 cancellation of the driver's license or identification card issued to a donor does not  
3 invalidate an anatomical gift.

4 4. Anatomical gift by will. An anatomical gift made by will takes effect upon the  
5 donor's death whether or not the will is probated. Invalidation of the will after the donor's  
6 death does not invalidate the gift.

7 **Uniform Comment**

8 (This is Section 5 of the Revised Uniform Anatomical Gift Act (2006).)

9 The execution formalities associated with the making of an anatomical gift generally  
10 remain the same as under the 1987 Act. However, in addition to the making of an  
11 anatomical gift by a donor card, will, or state-issued driver's license, an anatomical gift  
12 can also be made on a state-issued identification card or a donor registry.

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

18 Under Section 5(a)(2) an anatomical gift can be made in a donor's will. The section is  
19 silent regarding who must sign the will. Statutes of Wills generally require wills to be  
20 signed by the testator, and under certain circumstances, permit wills to be signed by  
21 another individual acting on behalf of the testator at the testator's request and often in the  
22 testator's presence. *See* Uniform Probate Code § 2-502. Thus, an anatomical gift can be  
23 made by the will of a donor whether the will is signed by a donor or a third party acting at  
24 the donor's request.

25  
26 Typically an anatomical gift of a part for transplantation or therapy is not made by a  
27 will. In fact, donors are ill-advised to make an anatomical gift by will as the terms of the  
28 will may not be known in sufficient time to allow for successful recovery of the gifted  
29 parts. Individuals who make an anatomical gift of their parts in a will for transplantation  
30 or therapy should make their wishes known by other means as well. On the other hand,  
31 some individuals donate their bodies to medical science for research or education, and  
32 they may do so by a will. Subsection (d) provides that, if an anatomical gift is made by  
33 will, it takes effect at the donor's death. The gift is valid even though the will is not  
34 probated or is declared invalid. *See* Section 5(d).

35 Subsection (a)(3) permits an oral gift by a terminally ill or injured donor if the donor's  
36 communication is addressed to at least two adult witness, at least one of whom is a  
37 disinterested witness. This subsection is new to anatomical gift acts. The ability to make  
38 an oral gift parallels the ability to make oral revocations and refusals.

39 Section 5(b) permits an anatomical gift by a signed donor card or other record. The  
40 card or record can be signed by any person (donor, agent, parent, or guardian) authorized  
41 to make an anatomical gift under Section 4. If the person making the gift is physically

1 unable to sign the card or record, the record can be signed by another individual acting at  
2 the direction of the donor or other person making the gift. In this case, the record must be  
3 witnessed by at least two adult witnesses, at least one of whom is a disinterested witness.  
4 Furthermore, the record must state that it was signed and witnessed at the request of the  
5 donor or other person.

6 A disinterested witness is a witness other than the spouse, child, parent, sibling,  
7 grandchild, grandparent, or guardian, of the individual who makes, amends, revokes, or  
8 refuses to make an anatomical gift, or another adult who exhibited special care and  
9 concern for that individual. A disinterested witness also does not include any person to  
10 whom an anatomical gift could pass under Section 11. *See* Section 2(5). For example, a  
11 terminally ill individual could make an anatomical gift by an oral communication to two  
12 unrelated neighbors or to one unrelated neighbor and one of the individual's adult  
13 children, but not to the individual's two adult children.

14 Section 5(b) also permits any person (donor, agent, parent, or guardian) authorized to  
15 make an anatomical gift under Section 4 to make that gift by authorizing that a statement  
16 or symbol indicating that the donor has made a gift be included on a donor registry.  
17 Donor registries were not contemplated by the prior versions of this [act]. Since the  
18 promulgation of those versions, numerous donor registries have been created under the  
19 auspices of states or private organizations. Over time donor registries may become the  
20 primary device by which anatomical gifts are made by donors. *See* Section 20 (creation of  
21 donor registry).

22 A decision was made in drafting this [act] not to include a specific form in the statute  
23 for the making of an anatomical gift. Rather, the drafting committee concluded that  
24 suggested forms consistent with this [act] be included in these comments. Three such  
25 forms follow:

26 DONOR CARD

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

28  Any needed organs, eyes, and tissue  ONLY the following organs, eyes,  
29 and tissue:  
30

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

32 DONOR CARD

33  
34 I wish to donate my organs, eyes, and tissue. I wish to give (complete either

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Section A, B, or C):

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

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

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

DONOR CARD

I give, upon my death, the following gifts for the purpose of (*choose whichever applies*):  only transplantation and therapy,  only research and education,  transplantation, therapy, research, or education

For the purposes specified above, I give:  
 ALL needed organs, tissues, and eyes; or  
(If you checked the box immediately above, you should not check specific boxes below).

1           [ ] Organs   [ ] Tissues   [ ] Eyes

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

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

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5  
6  
7  
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          Date: \_\_\_\_\_           Donor's Signature: \_\_\_\_\_

9    **§2946. Amending or revoking anatomical gift before donor's death**

10    **1. Donor or authorized person.** Subject to section 2948, a donor or other person  
11 authorized to make an anatomical gift under section 2944 may amend or revoke an  
12 anatomical gift by:

13    A. A record signed by:

14       (1) The donor;

15       (2) The other person; or

16       (3) Subject to subsection 2, another individual acting at the direction of the  
17 donor or the other person if the donor or other person is physically unable to sign;  
18 or

19    B. A later-executed document of gift that amends or revokes a previous anatomical  
20 gift or portion of an anatomical gift, either expressly or by inconsistency.

21    **2. Individual acting at donor's or authorized person's direction.** A record signed  
22 pursuant to subsection 1, paragraph A, subparagraph (3) must:

23    A. Be witnessed by at least 2 other individuals who are at least 18 years of age, one  
24 of whom is a disinterested witness, who have signed at the request of the donor or the  
25 other person; and

26    B. State that it has been signed and witnessed as provided in paragraph A.

27    **3. Revocation by destruction or cancellation of document.** Subject to section  
28 2948, a donor or other person authorized to make an anatomical gift under section 2944  
29 may revoke the gift by the destruction or cancellation of the document of gift, or a portion  
30 of the document of gift used to make the gift, with the intent to revoke the gift.

31    **4. Amendment or revocation by donor during terminal illness or injury.** A  
32 donor may amend or revoke an anatomical gift that was not made in a will by any form of  
33 communication during a terminal illness or injury addressed to at least 2 other individuals  
34 who are at least 18 years of age, one of whom is a disinterested witness.

1 5. Amendment or revocation of gift in will. A donor who makes an anatomical  
2 gift in a will may amend or revoke the gift in the manner provided for amendment or  
3 revocation of wills or as provided in subsection 1.

4 **Uniform Comment**

5 (This is Section 6 of the Revised Uniform Anatomical Gift Act (2006).)

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

9 Under Section 6(a)(1), an anatomical gift can be revoked or amended by a record  
10 signed by the donor or the other person authorized to make an anatomical gift under  
11 Section 4. If the donor or other person is physically unable to sign a record amending or  
12 revoking an anatomical gift, the record may be signed by another individual acting at the  
13 direction of the donor or other person so long as the record is witnessed by at least two  
14 adult witness, at least one of whom is a disinterested witness. In this case, the record must  
15 state that it was signed and witnessed at the request of the donor or other person.

16 Subsection (a)(2), borrowing from statutes dealing with the revocation of wills,  
17 contemplates revocations or amendments made by a later-executed document of gift  
18 either expressly or by inconsistency. For example, suppose a donor executes a will  
19 bequeathing her entire body to Medical School A for research or education. Later, the  
20 donor signs a document of gift donating a kidney for transplantation. Since the later-  
21 executed document of gift is only inconsistent with the prior document of gift to the  
22 extent of the donated kidney, the donor's kidney would, if medically suitable, pass to the  
23 appropriate procurement organization, and the donor's body without the kidney would  
24 pass to Medical School A. *See* Section 11.

25 A driver's license that makes no provision for the making of an anatomical gift is not  
26 a document of gift because a document of gift is defined to be a donor card or other  
27 record "used to make an anatomical gift." *See* Section 2(6). Therefore, a later-issued  
28 driver's license that is silent regarding the licensee's intent to make an anatomical gift  
29 would not be inconsistent with a prior driver's license on which the donor had made an  
30 anatomical gift. Thus, the gift on the prior license would still be effective. For donors  
31 using a driver's license to make an anatomical gift, however, it is wise to always make the  
32 gift on the most current license as motor vehicle departments may have expunged  
33 information on a previously issued license from their electronic databases.

34 There is no requirement under this [act] that documents of gift be dated. A "dating  
35 requirement" was purposely omitted to avoid invalidating documents of gift written  
36 without the advice of counsel that may not have included a date. That purposeful  
37 omission could result in some proof issues if a question arises whether one document of  
38 gift revokes another by inconsistency. There is little evidence to suggest that this would  
39 be a problem, but should it arise, the matter would have to be resolved by resort to any  
40 competent evidence. If the evidence is not available, a presumption should arise that the  
41 document of gift with the most comprehensive gift controls given the policy of this [act]

1 to favor the making of anatomical gifts.

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

13 The ability to revoke an anatomical gift is subject to the limitations in Section 8. For  
14 example, if a donor makes an anatomical gift of a kidney, all other persons are precluded  
15 from revoking that gift. Therefore, the donor's later-appointed guardian would not be  
16 empowered to revoke that anatomical gift under Section 6.

17 Under Section 6(d) an anatomical gift may also be amended or revoked by a donor  
18 with a terminal illness or injury by any form of communication that is addressed to at  
19 least two adult witnesses, at least one of whom must be a disinterested witness. If the  
20 donor cannot communicate orally, acceptable forms of communication, in addition to a  
21 record, could include a movement of the head or eye in response to specific questions.

22 **§2947. Refusal to make anatomical gift and effect of refusal**

23 **1. Refusal of individual.** An individual may refuse to make an anatomical gift of  
24 the individual's body or part by:

25 **A. A record signed by:**

26 **(1) The individual; or**

27 **(2) Subject to subsection 2, another individual acting at the direction of the**  
28 **individual if the individual is physically unable to sign;**

29 **B. The individual's will whether or not the will is admitted to probate or invalidated**  
30 **after the individual's death; or**

31 **C. Any form of communication made by the individual during the individual's**  
32 **terminal illness or injury addressed to at least 2 other individuals who are at least 18**  
33 **years of age, one of whom is a disinterested witness.**

34 **2. Individual acting at direction of individual.** A record signed pursuant to  
35 subsection 1, paragraph A, subparagraph (2) must:

36 **A. Be witnessed by at least 2 other individuals who are at least 18 years of age, one**  
37 **of whom is a disinterested witness, who have signed at the request of the individual;**  
38 **and**

- 1 B. State that it has been signed and witnessed as provided in paragraph A.
- 2 3. Amendment or revocation by individual. An individual may amend or revoke a  
3 refusal:
- 4 A. In the manner provided in subsection 1 for making a refusal;
- 5 B. By subsequently making an anatomical gift pursuant to section 2945 that is  
6 inconsistent with the refusal; or
- 7 C. By the destruction or cancellation of the record evidencing the refusal, or the  
8 portion of the record used to make the refusal, with the intent to revoke the refusal.
- 9 4. Effect of unrevoked refusal. Except as otherwise provided in section 2948,  
10 subsection 7, in the absence of an express, contrary indication by the individual set forth  
11 in the refusal, an individual's unrevoked refusal to make an anatomical gift of the  
12 individual's body or a part bars all other persons from making an anatomical gift of the  
13 individual's body or the part.

14 **Uniform Comment**

15 (This is Section 7 of the Revised Uniform Anatomical Gift Act (2006).)

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

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

25 Refusals typically are made by a signed record. If the individual who wants to sign a  
26 refusal cannot physically do so, the refusal can be signed by another individual acting at  
27 the request of the individual. If the refusal is signed by another individual acting at the  
28 request of the individual making the refusal, the refusal must be witnessed by at least two  
29 adults, at least one of whom is a disinterested witness. Furthermore, the record must state  
30 that it was signed and witnessed at the request of the individual. *See* Section 7(a)(1) and  
31 (b).

32 A refusal can also be made by the individual's will whether or not the will is admitted  
33 to probate or is later invalidated. Additionally, a refusal can be made by any form of  
34 communication by a terminally ill or injured individual addressed to at least two adults, at  
35 least one of whom is a disinterested witness. *See* Section 7(a)(3).

36 Subsection (c) provides for the amendment or revocation of a refusal. A refusal may  
37 be revoked by a signed record. It can also be revoked by a later-made anatomical gift that  
38 is inconsistent with the refusal. For example, suppose an individual signs a refusal to be

1 an organ donor under Section 7. Later that individual signs a record stating only "I revoke  
2 the refusal." At this point that individual is neither a donor nor a refuser and upon the  
3 individual's death, an anatomical gift could be made by the person or persons listed in  
4 Section 9. On the other hand, suppose the individual who had signed a refusal later  
5 executed a document of gift donating "my eyes." Here there is an anatomical gift of the  
6 eyes and a refusal to be a donor of any other part. This would bar any person from  
7 revoking the anatomical gift of the eyes or making an anatomical gift of any other part.  
8 Similarly, suppose the individual had signed a refusal and later obtained a driver's license  
9 stating that the individual wanted to be an "organ donor." The driver's license would  
10 revoke the refusal to the extent inconsistent with the refusal, and there would be an  
11 anatomical gift of the donor's organs, eyes, and tissue. *See* Section 11(f). Lastly, under  
12 limited circumstances, a refusal can be revoked orally. *See* Section 7(c)(1).

13 Subsection (d) provides that an individual's unrevoked refusal to make an anatomical  
14 gift of the individual's body or part bars all others from later making an anatomical gift of  
15 the body or part. Thus, suppose an individual signs an unrevoked Section 7 refusal. No  
16 other person before or after that individual's death could make an anatomical gift for that  
17 individual. This section honors the autonomy of the individual to refuse to have his body  
18 or parts become the subject of an anatomical gift. It prevents families from making  
19 donations on behalf of decedents who, while living, had signed a refusal to make an  
20 anatomical gift unless there is evidence that the individual signing the refusal did not  
21 intend to have that refusal bind others after death.

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

36 An individual's refusal could be limited to a part. For example, an individual might  
37 sign a refusal to donate the individual's eyes. In the absence of an express, contrary  
38 indication, the refusal would not apply to the individual's other parts. Thus, following the  
39 individual's death, the persons listed in Section 9 could make an anatomical gift of the  
40 individual's other parts.

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

42 I, \_\_\_\_\_, refuse to make any anatomical gift of my body or  
43 any part.



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**§2948. Preclusive effect of anatomical gift, amendment or revocation**

**1. Person other than donor barred.** Except as otherwise provided in subsection 7, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending or revoking an anatomical gift of a donor's body or a part if the donor made an anatomical gift of the donor's body or the part under section 2945 or an amendment to an anatomical gift of the donor's body or the part under section 2946.

**2. Revocation not refusal.** A donor's revocation of an anatomical gift of the donor's body or a part under section 2946 is not a refusal and does not bar another person specified in section 2944 or 2949 from making an anatomical gift of the donor's body or a part under section 2945 or 2950.

**3. Effect of gift or amendment by person other than donor.** If a person other than the donor makes an unrevoked anatomical gift of the donor's body or a part under section 2945 or an amendment to an anatomical gift of the donor's body or a part under section 2946, another person may not make, amend or revoke the gift of the donor's body or part under section 2950.

**4. Effect of revocation by person other than donor.** A revocation of an anatomical gift of the donor's body or a part under section 2946 by a person other than the donor does not bar another person from making an anatomical gift of the body or a part under section 2945 or 2950.

**5. Effect of gift of a part or for a purpose.** In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 2944:

**A.** An anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person under section 2945 or 2950; and

**B.** An anatomical gift of a part for one or more of the purposes set forth in section 2944 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 2945 or 2950.

**6. Donor unemancipated minor.** If a donor who is an unemancipated minor dies under 18 years of age, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

**7. Parent's revocation of unemancipated minor's refusal.** If an unemancipated minor who signed a refusal dies under 18 years of age, a parent of the individual who is reasonably available may revoke the individual's refusal.

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**Uniform Comment**

(This is Section 8 of the Revised Uniform Anatomical Gift Act (2006).)

Section 2(h) of the 1987 Act provided that "an anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death." The intent of that section was to assure donation finality for anatomical gifts made by donors prior to death. For many years, however, it was the practice, albeit now changing, for procurement organizations to seek permission from donor families before parts could be recovered from deceased donors. This practice, however, is inconsistent both with the 1987 Act and, more importantly, the respect due to donors who have made anatomical gifts during their lives. Furthermore, that practice could result in unnecessary delays in the recovery of organs.

Section 8 is designed to state firmly the rule that a donor's autonomous decision regarding the making of an anatomical gift is to be honored and implemented and is not subject to change by others. Section 8 not only continues the policy of making lifetime donations irrevocable but also is restated to take away from families the power, right, or authority to consent to, amend, or revoke donations made by donors during their lifetimes.

Section 8 addresses the possible tension between a donor's autonomous decision to be a donor with the interest of surviving family members to make that decision. It addresses this tension by favoring the decision of the donor over the desires of the family. Section 8(a) strips surviving family members of at least one stick in a bundle of property rights they might otherwise have under state law—the right to make, amend, or revoke an anatomical gift of a body or part if the donor made an anatomical gift or an amendment of the gift of the body or part. This section does not affect property rights families might otherwise have in a decedent's body under other law, such as the right to dispose of a decedent's body after the part that was the subject of the anatomical gift has been recovered. In fact, language in Section 11(h) confirms the family's right to dispose of the donor's body after the donor's parts have been recovered for transplantation, therapy, research, or education.

Section 8(a) provides that, if a donor has made an anatomical gift or has amended an anatomical gift, no other person can make, amend, or revoke that gift. For example, suppose a donor gifts the donor's organs for transplantation. By virtue of Section 8(a), no other person can amend or revoke that gift. In fact, because all other persons are barred from doing so, they have no legal authority or right to amend or revoke the anatomical gift. This section does not apply to bar the parents of an unemancipated minor donor who dies under the age of 18 from revoking the minor donor's gift. *See* Section 8(g).

Section 8(a) is subject to the provisions of subsection (f). Under subsection (f) the donor's gift of a part for one purpose does not preclude another person from expanding the gift to include another purpose under either Section 5 or 10. For example, suppose the donor signs a document of gift stating: "I give my kidney for transplantation." Following

1 the donor's death, an individual listed in Section 9 could expand that gift to include  
2 research in the event the kidney was not medically suitable for transplantation. The right  
3 to expand the purposes of the gift can be restricted by the donor.

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

14 Section 8(c) provides that a gift or an amendment of a gift by a person other than the  
15 donor under Section 5 or 6 bars other persons from making, amending, or revoking that  
16 gift under Section 10 only. For example, suppose the guardian of an adult makes a gift on  
17 the adult's behalf. At the adult's later death, the adult's surviving child could not amend or  
18 revoke that gift. On the other hand, suppose a donor's agent makes a gift during the  
19 donor's lifetime and later a guardian is appointed for the donor. The guardian would not  
20 be barred from amending that gift or revoking it. The difference is that the persons named  
21 in Section 4 are viewed as the donor's alter egos with power to control the donation  
22 decision up until the time of the donor's death. Of course, the donor could also amend or  
23 revoke the agent's gift.

24 Under Section 8(d) if a person other than the donor revokes an anatomical gift under  
25 Section 6, the revocation does not bar another person from making a gift under either  
26 Section 5 or Section 10. For example, suppose the donor's parent makes an anatomical  
27 gift. Twelve years later the donor's agent revokes that gift under Section 6. (Section 8(c)  
28 does not bar the agent from revoking the gift). Then, five years later a guardian is  
29 appointed for the principal. The guardian could make an anatomical gift for the principal  
30 under Section 5 because Section 8(d) does not bar the guardian from making the gift.  
31 Likewise, the revocation of an anatomical gift by an agent, parent, or guardian would not  
32 prevent the making of an anatomical gift under Section 10. For example, suppose an  
33 agent makes an anatomical gift for a donor which the agent revokes prior to the  
34 principal's death. The principal takes no further action to effectuate the anatomical gift  
35 and dies survived by a spouse and predeceased by the agent. The spouse could make an  
36 anatomical gift under Section 10 because the agent's revocation of the anatomical gift  
37 does not prevent the spouse from making the anatomical gift.

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

43 Anatomical gifts can only be made for four purposes—transplantation, therapy,

1 research or education. See Sections 4 and 9. Section 8(f) provides that an anatomical gift  
2 of a part for one or more of the purposes of transplantation, therapy, research or education  
3 does not limit the ability to make a later gift of the part for other purposes by the donor or  
4 any other person under Section 5 or Section 10. For example, suppose a donor donates  
5 "all organs, eyes, and tissue for transplantation or therapy." That gift would not bar a gift  
6 under Section 10 of the organs, eyes, or tissue for research. The donor can bar an  
7 expansion of the gift's purposes by an express contrary direction. For example a donor's  
8 gift of "organs, eyes, and tissue only for transplantation" would bar others from  
9 expanding the purpose of the gift to include research.

10 Section 8(g) permits either parent of an unemancipated minor donor who dies under  
11 the age of 18 to revoke that gift. This subsection applies only if the child dies under the  
12 age of 18. It does not empower the parent of a living minor to revoke that minor's  
13 anatomical gift while the minor is living. In fact, Section 8(a) would preclude the parent  
14 from revoking the minor child's anatomical gift. A parent who does not wish the parent's  
15 minor child to make an anatomical gift should communicate the parent's desires to that  
16 child. Once the minor donor becomes an adult, neither parent has the right to revoke the  
17 gift.

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

21 Both Section 8(g) and 8(h) require the parent to be reasonably available to either  
22 revoke a gift or a refusal. If both parents are reasonably available, either one can revoke  
23 the gift or the refusal.

24 **§2949. Who may make anatomical gift of decedent's body or part**

25 **1. Gift by members of class, priority.** Subject to subsections 2 and 3 and unless  
26 barred by subsection 4, an anatomical gift of a decedent's body or part for purposes of  
27 transplantation, therapy, research or education may be made, in the order of priority  
28 listed, by any member of the following classes of persons who is reasonably available:

29 A. An agent of the decedent at the time of death who could have made an anatomical  
30 gift under section 2944, subsection 2 immediately before the decedent's death;

31 B. The spouse of the decedent;

32 C. Adult children of the decedent;

33 D. Parents of the decedent;

34 E. Adult siblings of the decedent;

35 F. Adult grandchildren of the decedent;

36 G. Grandparents of the decedent;

37 H. An adult who exhibited special care and concern for the decedent;

1 I. The persons who were acting as the guardian of the person of the decedent at the  
2 time of death; and

3 J. Any other person having the authority to dispose of the decedent's body.

4 **2. Anatomical gift by member of class unless object.** If there is more than one  
5 member of a class listed in subsection 1, paragraph A, C, D, E, F, G or I entitled to make  
6 an anatomical gift, an anatomical gift may be made by a member of the class unless that  
7 member or a person to which the gift can pass under section 2951 knows of an objection  
8 by another member of the class. If an objection is known, the gift may be made only by a  
9 majority of the members of the class who are reasonably available.

10 **3. Member of prior class reasonably available.** No person may make an  
11 anatomical gift if, at the time of the decedent's death, a person in a prior class under  
12 subsection 1 is reasonably available to make or to object to the making of an anatomical  
13 gift.

14 **4. Gift barred.** An anatomical gift may not be made if doing so is barred by section  
15 2947 or 2948.

16 **Uniform Comment**

17 (This is Section 9 of the Revised Uniform Anatomical Gift Act (2006).)

18 Section 9(a) empowers the persons listed in the section to make an anatomical gift of  
19 a decedent's body or parts unless they are otherwise barred from doing so under Section 7  
20 or Section 8. Persons who can make an anatomical gift under Section 9 often will be  
21 consulted whether they would be willing to make a gift when the prospective donor is  
22 near death. *See also* Section 10, comment (last paragraph).

23 The list of persons who can make an anatomical gift on behalf of a decedent is  
24 slightly expanded from prior law. This list now includes that individual who at the time of  
25 the decedent's death was acting as an agent of the decedent, adult grandchildren of the  
26 decedent, and a close friend of the decedent.

27 This [act] does not extend the agency relationship beyond a principal's death. Under  
28 other law, an agent's power under a power of attorney for health care or any other power  
29 terminates when the principal dies. But, under this [act] and assuming that the agent was  
30 neither barred under Section 8 nor prohibited in the power of attorney for health care  
31 from making anatomical gifts, the person who had been acting as an agent at the time of  
32 the principal's death (even though death terminated the agency relationship) has the first  
33 priority to make an anatomical gift on behalf of the deceased principal.

34 Absent a donation by the decedent or the decedent's former agent, other persons or  
35 classes of person are empowered to make an anatomical gift in the following order:  
36 spouse of the decedent; adult children of the decedent; parents of the decedent; adult  
37 siblings of the decedent; adult grandchildren of the decedent; grandparents of the  
38 decedent; an adult who exhibited "special care and concern for the decedent;" and the  
39 person who was acting as guardian of the decedent at the time of the decedent's death.

1 Lastly, "any other person having the authority to dispose of the decedent's body" can  
2 make the decision if no other persons are reasonably available. In those states that  
3 recognize domestic partners, the addition of the domestic partner to Section 9(a)(2) would  
4 be warranted. In states that do not recognize domestic partners, individuals with domestic  
5 partners who wish to be donors should make an anatomical gift before death or designate  
6 their domestic partners as agents to give them the first priority under this section.

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

10 In the absence of any person listed in paragraphs (1) through (9) to make an  
11 anatomical gift, the gift can be made by "any other person having the authority to dispose  
12 of the decedent's body." This [act], like its predecessors, does not specify what person has  
13 the authority to dispose of a decedent's body. Who that person is must be determined by  
14 law other than this [act]. One such person might be a coroner or medical examiner in  
15 possession of an unclaimed body who under law other than this [act] is authorized to  
16 dispose of the body after a certain period of time. Of course, in that case it is most  
17 unlikely that the decedent's organs could be donated as they are not likely to be medically  
18 suitable for transplantation or therapy given the amount of time that likely will pass  
19 before it can be determined that no one else will claim the body. But, the decedent's eyes  
20 or tissue might be medically suitable for donation. And, of course, the whole body could  
21 be the subject of an anatomical gift.

22 Subsection (a) permits any member of a class to make an anatomical gift. Under  
23 subsection (b), however, a class member cannot make an anatomical gift if the class  
24 member, or the person to which the gift could pass under Section 11, knows of any  
25 objection to the making of the gift by another member of the class. If an objection is  
26 known, the gift can only be made by a majority of the members of the same class who are  
27 reasonably available. If the class member wishing to make the gift is the only reasonably  
28 available member of the class, that class member alone can make the gift even though the  
29 class member knows of an objection by another class member who is not reasonably  
30 available. If more than one member of the class is reasonably available, the gift can be  
31 made only if a majority of them agree. To illustrate, suppose the decedent is survived by  
32 three children. The eldest, who is unaware of any objection by the other two, can make an  
33 anatomical gift. If, however, the eldest knows that one of the other siblings objects and  
34 that sibling is reasonably available, both must agree to make the gift if the third sibling is  
35 not reasonably available. If all three siblings are reasonably available, at least two would  
36 have to agree to make the gift.

37 This section departs from both the 1968 Act which required children to act by a  
38 majority and the 1987 Act which barred a class member from making a gift (and the  
39 donee from accepting the gift) if there was a known objection by another member of the  
40 class.

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

1       A person cannot make an anatomical gift if, at the time of the decedent's death, a  
2 person in a prior class is reasonably available to either make or object to the making of an  
3 anatomical gift. *See* Section 9(c). The assumption here is that a person in a prior class is  
4 reasonably available but has not yet been contacted by a procurement organization. For  
5 example, suppose only the decedent's grandchildren are physically present at the hospital  
6 when the decedent dies, but the decedent's children are able to be contacted. For purposes  
7 of this [act], the children are reasonably available and, therefore, the grandchildren who  
8 are at the hospital cannot make an anatomical gift.

9       As highlighted above, known objections by persons not reasonably available do not  
10 bar persons who are reasonably available from making an anatomical gift whether the  
11 objections are held by a person in a prior class or the same class. This is purposeful. The  
12 policy choice here is essentially that only persons who are reasonably available can make  
13 or object to the making of an anatomical gift. That is because the known objection of a  
14 person who is not reasonably available may be based upon faulty information about the  
15 effects of a gift or other concerns that could have been ameliorated had the person been  
16 reasonably available to discuss the matter with a procurement organization or others.

17       The concept and definition of "reasonably available" is drawn from lessons learned in  
18 the drafting of the Uniform Health-Care Decisions Act and borrows from the language in  
19 Section 1(14) of that act. The making of an anatomical gift following a decedent's death is  
20 extremely time sensitive, and a decision to donate must be made within a relatively short  
21 period of time following death if the organs are to remain viable and human lives are to  
22 be saved. Reasonably available is not synonymous with physically present. The phrase  
23 (defined in Section 2 (23)) means able to be contacted without "undue effort and willing  
24 and able to act in a timely manner consistent with existing medical criteria necessary for  
25 the making of an anatomical gift." Thus, a sibling who can be easily contacted by  
26 telephone is reasonably available. Section 14(g) imposes on procurement organizations  
27 an obligation to make a reasonable search for persons with a priority to make an  
28 anatomical gift.

29       An individual with a higher priority to make an anatomical gift may be unwilling to  
30 make a decision, preferring it be made by others. For example, a decedent's spouse may  
31 be unwilling to make a decision to donate the decedent's organs, preferring that any  
32 decision be made by the decedent's children. Under this [act] the spouse, being unwilling  
33 to make a decision, is not reasonably available. There is some concern that an  
34 unwillingness to make a decision is equivalent to an objection and should have been  
35 treated as such under this [act]. But, this [act] reflects a judgment that the potential  
36 savings in human life justifies the position that the inability to express a decision is  
37 tantamount to not being available to make a decision. This policy choice was supported  
38 by the fact that procurement organizations are well-trained to work with family members  
39 when seeking an anatomical gift to distinguish between an objection and a true  
40 unwillingness to make a decision.

1 **§2950. Manner of making, amending or revoking anatomical gift of decedent's body**  
2 **or part**

3 **1. Authorized person: document; oral communication.** A person authorized to  
4 make an anatomical gift under section 2949 may make an anatomical gift by a document  
5 of gift signed by the person making the gift or that person's oral communication that is  
6 electronically recorded or is contemporaneously reduced to a record and signed by the  
7 individual receiving the oral communication.

8 **2. Amendment or revocation by prior class member.** Subject to subsection 3, an  
9 anatomical gift by a person authorized under section 2949 may be amended or revoked  
10 orally or in a record by any member of a prior class who is reasonably available. If more  
11 than one member of the prior class is reasonably available, the gift may be amended or  
12 revoked only if a majority of the reasonably available members object to the amending or  
13 revoking of the gift or they are equally divided as to whether to amend or revoke an  
14 anatomical gift.

15 **3. Revocation effective if known.** A revocation under subsection 2 is effective only  
16 if the procurement organization or transplant hospital or the physician or technician  
17 knows of the revocation before an incision has been made to remove a part from the  
18 donor's body or before invasive procedures have begun to prepare the recipient.

19 **Uniform Comment**

20 (This is Section 10 of the Revised Uniform Anatomical Gift Act (2006).)

21 Section 10(a) provides that an anatomical gift by a person authorized to make the gift  
22 under Section 9 can be made by a document of gift that is signed by the person making  
23 the gift. The document of gift could be an e-mail. This might be a common form of a  
24 document of gift where the gift is made by a person named in Section 9 who is  
25 reasonably available but not physically present at the hospital where the donor died to  
26 deal in person with the procurement organization.

27 The person also may make the gift orally. An oral gift must be recorded or reduced to  
28 a record that is signed by the individual receiving the oral communication. For example,  
29 the decedent's spouse might consent to a gift over the telephone at the request of a  
30 procurement organization. The individual to whom the gift was communicated should  
31 then note that gift in a signed record.

32 In common with prior law, if a person makes an anatomical gift but there is a member  
33 of a prior class who becomes reasonably available, that member may revoke the gift. *See*  
34 Section 10(b)(2). If more than one member of the prior class becomes reasonably  
35 available, then the gift can be revoked only if the majority of the members of the prior  
36 class agree to revoke the gift or if they are equally divided. *See* Section 10(b)(2). For  
37 example, suppose an anatomical gift of a kidney is made by a parent of the decedent  
38 because none of the decedent's children are reasonably available to make the gift.  
39 However, before an incision is made to remove the kidney from the donor's body or  
40 invasive procedures have begun to prepare the recipient, a child of the decedent becomes  
41 reasonably available and purports to revoke the gift. If this child is the decedent's only



1 reasonably available child, the gift is revoked. If, on the other hand, two children become  
2 reasonably available, the gift is revoked only if they agree to revoke or they are equally  
3 divided whether to revoke. And, if three children become reasonably available, the gift is  
4 revoked if at least two of the three agree to revoke the gift.

5 If a gift is made by a member of a more remote class, the gift can be amended by the  
6 members of the prior class who become reasonably available. See Section 10(b)(1). If  
7 more than one member becomes reasonably available, the gift can be amended only if a  
8 majority of them agree. See Section 10(b)(1). For example, a grandchild of the decedent  
9 makes an anatomical gift of the decedent's kidneys for transplant. Any reasonably  
10 available child or, if more than one, a majority of them can amend the gift to provide that  
11 if the kidney is not medically suitable for transplant, it can be used for research.  
12 Amendments are not subject to subsection (c) (requiring revocations to be made before  
13 the incision is made to remove a part from the body or before invasive procedures have  
14 begun to prepare the recipient) as amendments typically would involve extending the  
15 purpose of the gift rather than preventing the gift from being made at all.  
16

17 This [act] is silent regarding whether a Section 10 gift can be made while a donor or  
18 prospective donor is near death or whether the gift can only be made after the donor or  
19 prospective donor has died. This is purposeful in order to allow procurement  
20 organizations and the person having the priority to make an anatomical gift under Section  
21 9 some latitude as to when to sign a document of gift. Of course, no gift is effective  
22 unless the donor or prospective donor dies and at the time of death the person making the  
23 anatomical gift then had the priority to make the gift.

24 **§2951. Persons that may receive anatomical gift; purpose of anatomical gift**

25 **1. Named recipient.** An anatomical gift of a body or part may be made to the  
26 following persons:

27 A. A named hospital, accredited medical school, dental school, college, university or  
28 organ procurement organization or other appropriate person for research or  
29 education;

30 B. A named individual designated by the person making the anatomical gift if the  
31 individual is the recipient of the part; or, if the part for any reason cannot be  
32 transplanted into the individual, the part passes in accordance with subsection 6 in the  
33 absence of an express, contrary indication by the person making the anatomical gift;  
34 or

35 C. A named eye bank or tissue bank.

36 **2. Named purpose.** If an anatomical gift of one or more specific parts or of all parts  
37 is made in a document of gift that does not name a person described in subsection 1 but  
38 identifies the purpose for which an anatomical gift may be used, the following rules  
39 apply.

40 A. If the part is an eye and the gift is for the purpose of transplantation or therapy,  
41 the gift passes to the appropriate eye bank.

1 B. If the part is tissue and the gift is for the purpose of transplantation or therapy, the  
2 gift passes to the appropriate tissue bank.

3 C. If the part is an organ and the gift is for the purpose of transplantation or therapy,  
4 the gift passes to the appropriate organ procurement organization as custodian of the  
5 organ.

6 D. If the part is an organ, an eye or tissue and the gift is for the purpose of research  
7 or education, the gift passes to the appropriate procurement organization.

8 **3. Priority of purposes.** For the purpose of subsection 2, if there is more than one  
9 purpose of an anatomical gift set forth in the document of gift but the purposes are not set  
10 forth in any priority, the gift must be used for transplantation or therapy if suitable for  
11 those purposes and, if the gift cannot be used for transplantation or therapy, the gift may  
12 be used for research or education.

13 **4. No named recipient or purpose.** If an anatomical gift of one or more specific  
14 parts is made in a document of gift that does not name a person described in subsection 1  
15 and does not identify the purpose of the gift, the decedent's parts may be used only for  
16 transplantation or therapy, and the gift passes in accordance with subsection 6.

17 **5. General intent.** If a document of gift specifies only a general intent to make an  
18 anatomical gift by words such as "donor," "organ donor" or "body donor" or by a symbol  
19 or statement of similar import, the decedent's parts may be used only for transplantation  
20 or therapy, and the gift passes in accordance with subsection 6.

21 **6. Rules of passing anatomical gifts.** For purposes of subsection 1, paragraph B  
22 and subsections 3 and 4, the following rules apply.

23 A. If the part is an eye, the gift passes to the appropriate eye bank.

24 B. If the part is tissue, the gift passes to the appropriate tissue bank.

25 C. If the part is an organ, the gift passes to the appropriate organ procurement  
26 organization as custodian of the organ.

27 **7. Passing of organ for transplantation or therapy.** An anatomical gift of an  
28 organ for transplantation or therapy, other than an anatomical gift under subsection 1,  
29 paragraph B, passes to the organ procurement organization as custodian of the organ.

30 **8. Custody of body or part if not passed or used.** If an anatomical gift does not  
31 pass pursuant to subsections 1 to 7 or the decedent's body or part is not used for  
32 transplantation, therapy, research or education, custody of the body or part passes to the  
33 person under obligation to dispose of the body or part.

34 **9. Acceptance of gift prohibited.** A person may not accept an anatomical gift if the  
35 person knows that the gift was not effectively made under section 2945 or 2950 or if the  
36 person knows that the decedent made a refusal under section 2947 that was not revoked.  
37 For purposes of this subsection, if a person knows that an anatomical gift was made on a  
38 document of gift, the person is deemed to know of any amendment or revocation of the  
39 gift or any refusal to make an anatomical gift on the same document of gift.

1 **10. Allocation of organs for transplant or therapy.** Except as otherwise provided  
2 in subsection 1, paragraph B, nothing in this chapter affects the allocation of organs for  
3 transplantation or therapy.

4 **Uniform Comment**

5 (This is Section 11 of the Revised Uniform Anatomical Gift Act (2006).)

6 Section 11 sets forth various rules to identify the person to which a part or body  
7 passes as the result of an anatomical gift.

8 Under Section 11(a)(1), an anatomical gift of a body for research or education can be  
9 made to a named organization. These gifts typically occur as the result of a whole body  
10 donation to a particular institution in the donor's will or as the result of a prior  
11 arrangement between a donor and a particular research or educational institution.

12 While Section 11(a)(2) permits a donation of a part to a named individual if the part is  
13 to be transplanted into that individual, such donations are exceedingly rare for at least two  
14 reasons. Only in rare circumstances would a donor, during the donor's life, know of an  
15 individual who would need an organ, eye, or tissue that would be the subject of an  
16 anatomical gift and, similarly, decedent's families are generally not likely to know the  
17 identity of such individuals. Furthermore, gifts to a named individual may not be  
18 medically suitable as the donor and recipient may have different blood types or other  
19 characteristics that make them incompatible.

20 If a gift of a part is made to a named individual and it is later determined that the part  
21 cannot be transplanted into that individual, the part passes to the organ procurement  
22 organization as custodian under subsection (g) to allocate the organ in accordance with  
23 applicable organ allocation policies unless the person making the gift expressly provides  
24 to the contrary. *See* Section 11(b).

25 Gifts by donors before death and gifts by others after a donor's death could specify  
26 both the parts that are the subject of the anatomical gift and the purposes of the gift. For  
27 example, a donor might make a gift of a kidney for transplantation or therapy. If a gift is  
28 made of one or more specific parts and specifies the purposes of the gift but does not  
29 name a person to whom the gift passes, then the gift passes to the appropriate eye bank if  
30 the gift is an eye and for the purpose of transplantation or therapy. *See* Section 11(c)(1). If  
31 the gift is of tissue for the purpose of transplantation or therapy, it passes to the  
32 appropriate tissue bank, Section 11(c)(2), and if the gift is an organ for the purpose of  
33 transplantation or therapy it passes to the appropriate organ procurement organization as  
34 custodian of the organ, Section 11(c)(3). A gift of a specific part for purposes of research  
35 or education passes to the appropriate eye bank, tissue bank, or organ procurement  
36 organization. *See* Section 11(c)(4). *See also* Section 5 comments, for examples of forms.

37 In some cases the person making the anatomical gift specifies that the gift can be used  
38 for transplantation, therapy, research, or education but these purposes are not set forth in  
39 the document of gift in any priority. For example, a donor might donate "my kidney for

1 purposes of transplantation, therapy, research, or education." Under Section 11(d), the gift  
2 must first be used for transplantation or therapy if suitable for either of those purposes. If  
3 not suitable, the gift may be used for research or education.

4 Most gifts made by donors before death are made by a driver's license or entry on a  
5 donor registry. If a donor's gift does not specify the purpose of the gift, as would occur if  
6 the driver's license indicated only that the donor was an "organ donor," the gift is only of  
7 the donor's parts (not the whole body), and the parts may be used only for transplantation  
8 or therapy. *See* Section 11(f). Likewise, if a gift of a part is made but the document of gift  
9 fails to specify the purpose of the gift or name a person to receive the gift, the part may be  
10 used only for transplantation or therapy. *See* Section 11(e). In either case, if the part is an  
11 eye, it passes to the appropriate eye bank, if tissue, it passes to the appropriate tissue  
12 bank, and if an organ, it passes to the appropriate organ procurement organization as  
13 custodian of the organ. *See* Section 11 (e), (f) and (g).

14 If a gift made under Section 4 is limited to transplantation or therapy by Section 11(e)  
15 or (f), procurement organizations could approach persons with a priority to make gifts  
16 under Section 9 to expand the purpose of the gift to include research or education and  
17 obtain their consent to use the gift for those purposes in the event the gift is unsuitable for  
18 transplantation or therapy. *See* Section 8(f).

19 A statement on a document of gift that the donor is an "organ donor" is an anatomical  
20 gift and not merely evidence of intention to be a donor. *See* Section 11(f). Thus, parts can  
21 be recovered from the donor without the need of a Section 10 gift. Additionally, as an  
22 anatomical gift by the donor, surviving family members would be barred from revoking  
23 the gift. *See* Section 8.

24 Under this [act], when an organ passes to an organ procurement organization for  
25 purposes of transplantation or therapy, it passes to the organ procurement organization as  
26 a "custodian." *See* Section 11(h). Under Section 274 of the National Organ Transplant  
27 Act in 1984, Congress created the Organ Procurement Transplantation Network (OPTN).  
28 *See*, 42 CFR §§ 121 et seq. Among other things, the OPTN oversees the nationwide  
29 allocation of organs for transplantation. Currently, the OPTN contracts with the United  
30 Network Organ Sharing ("UNOS"), a non-profit corporation, to administer the  
31 nationwide allocation of organs for transplantation. UNOS, in turn, has agreements with  
32 numerous organ procurement organizations that have specific designated service areas.  
33 The organ procurement organizations have primary responsibility to evaluate the medical  
34 suitability of organs for transplantation, seek anatomical gifts under Section 10 when the  
35 decedent was not a donor at or near death, arrange for the procurement of organs from  
36 donors, and cause organs to be allocated and transferred to recipients in accordance with  
37 their contractual obligations with the OPTN. Thus, organs passing to organ procurement  
38 organizations under this [act] for the purpose of transplantation or therapy pass to them in  
39 a custodial capacity. There is no expectation that the organ procurement organization will  
40 retain the organ. Eyes and tissue pass to the appropriate eye or tissue bank under no  
41 similar restrictions; therefore, eye and tissue banks do not properly take as a custodian.

42 To assist in the evaluation of potential donors, federal law also requires hospitals  
43 receiving Medicare and Medicaid funding to refer all deaths or near deaths to organ

1 procurement organizations or a third party designated by the organ procurement  
2 organization for possible organ, eye, and tissue donation. *See* 42 CFR § 482.45 (Medicare  
3 and Medicaid Programs: Conditions of Participation: Identification of Potential Organ,  
4 Tissue, and Eye Donors and Transplant Hospitals' Provision of Transplant-Related Data).  
5 These referral requirements have made the provisions of Section 5 of the 1987 Act  
6 obsolete, and, accordingly, those provisions have been deleted from this [act].

7 Section 11(i) provides that, if parts do not pass under the preceding provisions of the  
8 [act] or are not used for transplantation, therapy, research, or education, custody of the  
9 decedent's body or parts vests in the person under obligation to dispose of them. The  
10 person having custody to dispose of the decedent's body is determined by law other than  
11 this [act].

12 This [act] does not define the appropriate eye or tissue bank or organ procurement  
13 organization. Which of the many eye banks, tissue banks, or organ procurement  
14 organizations is the appropriate one is determined by factors outside the scope of this  
15 [act]. For example, hospitals, coroners or medical examiners likely will have cooperative  
16 agreements with particular eye and tissue banks that coordinate eye and tissue donations.  
17 As for the appropriate organ procurement organizations, that is determined by the policies  
18 of the OPTN.

19 Under the common law, a gift is effectuated by intent, delivery, and acceptance. (*But*  
20 *see* Section 13(a) regarding delivery). In common with general principles of gift law, an  
21 express acceptance of an anatomical gift is not required. However, Section 11(j) provides  
22 certain bars on the acceptance of an anatomical gift by a person that would trump the  
23 "acceptance presumption." A person may not accept an anatomical gift if the person  
24 knows of a Section 7 refusal. A person may not accept an anatomical gift if the person  
25 knows that a gift once made had been revoked or that a gift under Section 5 or 10 was not  
26 properly made. For example, suppose the decedent's children wish to donate organs that  
27 under Section 11 would pass to an organ procurement organization but that organization  
28 knows that the decedent's spouse is reasonably available to make or refuse to make a gift.  
29 The organ procurement organization may not accept the purported gift from the children.  
30 Suppose an organ procurement organization knows an anatomical gift was made on a  
31 document of gift. Because of the imputed knowledge requirement in the last sentence of  
32 Section 11(j), the organization may not accept that gift if on the same document of gift  
33 there is evidence that the gift was revoked.

34 Lastly, nothing in this [act] affects the allocation of organs for transplantation or  
35 therapy except in the case of a gift to a named individual under Section 11(a)(2). *See*  
36 Section 11(k). As noted above, the allocation of organs is controlled by the policies of the  
37 OPTN.

## 38 **§2952. Search and notification**

39 **1. Persons to conduct reasonable search.** The following persons shall make a  
40 reasonable search of an individual who the searcher reasonably believes is dead or near

1 death for a document of gift or other information identifying the individual as a donor or  
2 as an individual who made a refusal:

3 A. A law enforcement officer, firefighter, paramedic or other emergency rescuer  
4 finding the individual; and

5 B. If no other source of the information is immediately available, a hospital, as soon  
6 as practical after the individual's arrival at the hospital.

7 **2. Document of gift or refusal found.** If a document of gift or a refusal to make an  
8 anatomical gift is located by the search required by subsection 1, paragraph A and the  
9 individual or deceased individual to whom it relates is taken to a hospital, the person  
10 responsible for conducting the search shall send the document of gift or refusal to the  
11 hospital.

12 **3. Immunity.** A person is not subject to criminal or civil liability for failing to  
13 discharge the duties imposed by this section but may be subject to administrative  
14 sanctions.

15 **Uniform Comment**

16 (This is Section 12 of the Revised Uniform Anatomical Gift Act (2006).)

17 This section remains in substance the same as the prior 1968 and 1987 Acts. The  
18 constitutional standards of "reasonable search" under state and federal laws apply. In  
19 ordinary circumstances, reasonable search would only be of the person or in the  
20 immediate vicinity of the person. No courts have applied or extended this provision to  
21 allow a random and extensive search of premises. Because most likely an anatomical gift  
22 would have been made on a driver's license or donor registry and any donation on them is  
23 readily accessed by a procurement organization, there is no significant need to extend this  
24 section to allow searches of the premises.

25 **§2953. Delivery of document of gift not required; right to examine**

26 **1. Delivery during lifetime not required.** A document of gift need not be delivered  
27 during the donor's lifetime to be effective.

28 **2. Examination and copying.** Upon or after an individual's death, a person in  
29 possession of a document of gift or a refusal to make an anatomical gift with respect to  
30 the individual shall allow examination and copying of the document of gift or refusal by a  
31 person authorized to make or object to the making of an anatomical gift with respect to  
32 the individual or by a person to which the gift could pass under section 2951.

33 **Uniform Comment**

34 (This is Section 13 of the Revised Uniform Anatomical Gift Act (2006).)

35 Section 13(a), in common with prior versions of this [act], rejects the common-law

1 principle that a gift requires delivery to be effective. With the exception of gifts of whole  
2 bodies in deeded body programs, most anatomical gifts made by a donor during the  
3 donor's life are made without any communication between the person making the gift and  
4 the person to which the gift passes under Section 11 and for obvious reasons—the person  
5 is likely unknown.

6 This section does not affirmatively require any person in possession of a document of  
7 gift or a refusal to come forward at a decedent's death with that information. *But see*  
8 Section 12(b) (obligation of certain individuals to deliver a document of gift or refusal  
9 following a search). On the other hand, if a document of gift or a refusal is in the  
10 possession of someone other than the donor, that person shall allow other persons who  
11 can make or object to the making of an anatomical gift to review and copy such records.  
12 They shall also allow the person to which a gift could pass under Section 11 to examine  
13 and copy such documents. *See* Section 13(b). *See* also Section 20(c)(2).

14 **§2954. Rights and duties of procurement organization and others**

15 **1. Reasonable search of registry and records.** When a hospital refers an  
16 individual at or near death to a procurement organization, the organization shall make a  
17 reasonable search of any donor registry and records of the Secretary of State that it knows  
18 exist for the geographical area in which the individual resides to ascertain whether the  
19 individual has made an anatomical gift.

20 **2. Reasonable access to records of Secretary of State.** A procurement  
21 organization must be allowed reasonable access to information in the records of the  
22 Secretary of State to ascertain whether an individual at or near death is a donor.

23 **3. Reasonable examination to determine medical suitability.** When a hospital  
24 refers an individual at or near death to a procurement organization, the organization may  
25 conduct any reasonable examination necessary to ensure the medical suitability of a part  
26 that is or could be the subject of an anatomical gift for transplantation, therapy, research  
27 or education from a donor or a prospective donor. During the examination period,  
28 measures necessary to ensure the medical suitability of the part may not be withdrawn  
29 unless the hospital or procurement organization knows that the individual expressed a  
30 contrary intent.

31 **4. Reasonable examination after death.** Unless prohibited by law other than this  
32 chapter, at any time after a donor's death, the person to which a part passes under section  
33 2951 may conduct any reasonable examination necessary to ensure the medical suitability  
34 of the body or part for its intended purpose.

35 **5. Examination of medical records.** Unless prohibited by law other than this  
36 chapter, an examination under subsection 3 or 4 may include an examination of all  
37 medical records of the donor or prospective donor.

38 **6. Reasonable search for parents of minor.** If a donor, at the time of death, is  
39 under 18 years of age, a procurement organization shall conduct a reasonable search for  
40 the parents of the donor and, unless the procurement organization knows the donor is an

1 emancipated minor, provide the parents with an opportunity to revoke or amend the  
2 anatomical gift or revoke a refusal.

3 7. Reasonable search for person to make gift on behalf of donor. A procurement  
4 organization shall make a reasonable search for any person listed in section 2949 having  
5 priority to make an anatomical gift on behalf of a prospective donor.

6 8. Advise of relevant information. If a procurement organization receives  
7 information that an anatomical gift to any other person was made, amended or revoked, it  
8 shall promptly advise the other person of all relevant information.

9 9. Superior rights. Subject to section 2951, subsection 8 and section 2963, the  
10 rights of the person to which a part passes under section 2951 are superior to rights of all  
11 others with respect to the part. The person may accept or reject an anatomical gift in  
12 whole or in part. Subject to the terms of the document of gift and this chapter, a person  
13 that accepts an anatomical gift of an entire body may allow embalming or cremation and  
14 use of remains in a funeral service. If the gift is of a part, the person to which the part  
15 passes under section 2951, upon the death of the donor and before embalming or  
16 cremation, shall cause the part to be removed without unnecessary mutilation.

17 10. Removal or transplantation procedure. Neither the physician who attends the  
18 decedent at death nor the physician who determines the time of the decedent's death may  
19 participate in the procedures for removing or transplanting a part from the decedent.

20 11. Physician or technician qualified. A physician or technician may remove a  
21 donated part from the body of a donor that the physician or technician is qualified to  
22 remove.

23 **Uniform Comment**

24 (This is Section 14 of the Revised Uniform Anatomical Gift Act (2006).)

25 When a hospital refers an individual at or near death to a procurement organization,  
26 Section 14(a) requires the procurement organization to conduct a reasonable search of the  
27 motor vehicle records or of any donor registry it knows to exist for the geographical area  
28 in which that individual resides to determine if that individual is a donor. This [act] does  
29 not require a hospital to make a referral to a procurement organization. However, a  
30 referral may be required by contract or by law other than this [act]. *See, e.g.,* Section 42  
31 CFR § 482.45.

32 Section 14(b) requires a state department of motor vehicles to allow all procurement  
33 organizations reasonable access to information in the department's records.

34 Procurement organizations may conduct a reasonable examination to determine the  
35 medical suitability of a part that is or could be the subject of an anatomical gift. This  
36 examination typically is made in a relatively short period of time. During the examination  
37 period, measures necessary to ensure the medical suitability of a part cannot be  
38 withdrawn from the individual who was referred to the procurement organization unless



1 the procurement organization or hospital knows that individual expressly provided to the  
2 contrary. *See* Section 14(c). A general direction in a power of attorney for health care or  
3 advance health-care directive that the patient does not wish to have life prolonged by the  
4 administration of life support systems should not be construed as an expression of a  
5 contrary intent. *See* Section 14(c). *See also*, Section 21.

6 Persons to whom the part passes after the donor's death also may conduct a  
7 reasonable examination to ensure the medical suitability of the part. An examination  
8 includes an examination of the relevant medical records. *See* Section 14(e). Section 14(e)  
9 is not inconsistent with Section 164.512(h) of the HIPAA regulations permitting the  
10 disclosure without consent of protected health information "to organ procurement  
11 organizations or other entities engaged in the procurement, banking, or transplantation of  
12 cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye, or tissue  
13 donation and transplantation."

14 If a minor donor dies, the minor's parents are entitled to revoke the minor's  
15 anatomical gift or refusal, if any. Section 14(f) requires a procurement organization to  
16 make a reasonable search for the minor's parents to provide them with an opportunity to  
17 do so.

18 Under Section 14(g), a procurement organization also is required to make a  
19 reasonable search for any person empowered to make a gift under Section 9. If the donor  
20 made an anatomical gift of all parts for transplantation, therapy, research, or education or  
21 of the donor's whole body, there would be no one under Section 9 with a priority to make  
22 a gift because the persons listed in Section 9 would be barred by Section 8 from making  
23 or revoking the gift. Thus, if a donor made such a gift, there is no reason for procurement  
24 organizations to search for any of the persons named in Section 9.

25 Section 14(g) also requires a procurement organization that acquires knowledge that  
26 an anatomical gift has been made to another person to advise that person of the gift. For  
27 example, suppose an organ procurement organization discovers, while searching a donor  
28 registry, that an anatomical gift was made of the eyes. The organ procurement  
29 organization is required to notify the appropriate eye bank of that gift.

30 Under Section 14(j) neither the physician who attends the decedent at death nor the  
31 physician who determines the time of death may participate in the procedures for  
32 removing or transplanting a part. The concept of "attends" is well known in the medical  
33 profession and contemplates the attending physician who cared for the donor during the  
34 donor's life. This section is similar to provisions in prior law and is intended to bar what  
35 might otherwise be perceived as a conflict of interest should a physician attend both the  
36 donor and the recipient. Some surveys have suggested that a small segment of the  
37 population believes that a patient who might die without proper medical attention may  
38 not be treated in order that the patient's organs can be used for another. While there is  
39 absolutely no evidence that this has ever occurred, this section is included in this [act] to  
40 address any public misperceptions by making clear that it should not be able to happen  
41 legally.

1 **§2955. Coordination of procurement and use**

2 Each hospital in this State, after consultation with procurement organizations, shall  
3 establish agreements or affiliations for coordination of procurement and use of human  
4 bodies and parts.

5 **Uniform Comment**

6 (This is Section 15 of the Revised Uniform Anatomical Gift Act (2006).)

7 42 CFR § 482.45 (Medicare and Medicaid Programs: Conditions of Participation:  
8 Identification of Potential Organ, Tissue, and Eye Donors and Transplant Hospitals'  
9 Provision of Transplant-Related Data) sets forth criteria requiring hospitals and organ  
10 procurement organizations to have cooperative agreements to permit organ procurement  
11 organizations to determine the suitability of organs for transplant. Furthermore in the  
12 absence of alternative arrangements by a hospital, organ procurement organizations have  
13 the responsibility to determine the suitability of tissues and eyes using the definition of  
14 potential tissue and eye donors and the notification protocol developed in consultation  
15 with the tissue and eye banks identified by the hospital for this purpose. Hospitals are also  
16 required to (1) have an agreement with at least one tissue bank and one eye bank to  
17 cooperate in the retrieval, processing, preservation, storage, and distribution of tissue and  
18 eyes and (2) ensure, working with organ procurement organizations, that families of  
19 potential donors are informed of the option of donating eyes, tissue, and organs.

20 **§2956. Sale or purchase of parts prohibited**

21 **1. Crime.** Except as otherwise provided in subsection 2, a person that knowingly,  
22 for valuable consideration, purchases or sells a part for transplantation or therapy if  
23 removal of a part from an individual is intended to occur after the individual's death  
24 commits a Class C crime.

25 **2. Reasonable compensation for services permitted.** A person may charge a  
26 reasonable amount for the removal, processing, preservation, quality control, storage,  
27 transportation, implantation or disposal of a part.

28 **Uniform Comment**

29 (This is Section 16 of the Revised Uniform Anatomical Gift Act (2006).)

30 This section applies only to anatomical gifts and is substantially the same as the  
31 provisions in the 1968 and 1987 Acts. It only applies to sales of parts intended to be  
32 recovered from a decedent after death for transplantation or therapy. It remains  
33 essentially unchanged from prior law. This section is consistent and in accord with the  
34 National Organ Transplant Act, 42 U.S. C. § 274(e).

1     **§2957. Penalty**

2             A person that intentionally falsifies, forges, conceals, defaces or obliterates a  
3 document of gift, an amendment or revocation of a document of gift or a refusal in order  
4 to obtain a financial gain commits a Class C crime.

5                                     **Uniform Comment**

6     (This is Section 17 of the Revised Uniform Anatomical Gift Act (2006).)

7             This section is new and addresses abuses that have been widely reported. It  
8 criminalizes the intentional falsification of a document of gift or refusal when done to  
9 obtain a financial gain. For example, suppose a person falsifies a document of gift in  
10 order to sell a decedent's part to a research institution. The person who falsified the  
11 document of gift would be guilty of a felony.

12             The only express liability sections in this [act] are in Section 16 relating to sales and  
13 Section 17 relating to falsified documents. Occasional news stories have surfaced about  
14 alleged other improprieties in the procurement and allocation of organs and some have  
15 argued that this [act] should address them. However, those other improprieties are  
16 addressed by law other than this [act] or administratively, including regulatory rules,  
17 licensing requirements, Unfair and Deceptive Practices Acts, and the common law.

18     **§2958. Immunity**

19             **1. In accordance with chapter.** A person that acts in accordance with this chapter  
20 or with the applicable anatomical gift law of another state or attempts in good faith to do  
21 so is not liable for the act in a civil action, criminal prosecution or administrative  
22 proceeding.

23             **2. No liability for injury or damage.** Neither the person making an anatomical gift  
24 nor the donor's estate is liable for any injury or damage that results from the making or  
25 use of the gift.

26             **3. Reliance on representations.** A person who documents the making, amending or  
27 revoking of an anatomical gift under this chapter may rely upon representations of the  
28 individuals listed in section 2949, subsection 1, paragraphs B, C, D, E, F, G and H  
29 relating to their relationship to the donor or prospective donor unless the person knows  
30 that the representation is untrue.

31                                     **Uniform Comment**

32     (This is Section 18 of the Revised Uniform Anatomical Gift Act (2006).)

33             A version of subsection (a) has been in the two prior anatomical gift acts. *See*  
34 *Subsection 7(c) of the 1968 Act and Section 11(c) of the 1987 Act.* In the 1968 Act,  
35 "good faith" had the common-law meaning of honesty-in-fact. In short, it was meant to be

1 a subjective standard involving determination of the intent or state of mind of the person  
2 concerned, namely the honesty of intent. As the official comment for Section 7 of the  
3 1968 Act states: "The entire section 7 merits genuinely liberal interpretation to effectuate  
4 the purpose and intent of the Uniform Act, that is, to encourage and facilitate the  
5 important and ever increasing need for human tissue and organs for medical research,  
6 education and therapy, including transplantation." Thus, immunity was intended to be  
7 extended to persons which generally and substantively act in accordance with the 1968  
8 Act, with honesty of intent.

9 If parties were held to an overly strict adherence to this [act] when transplants must  
10 be made shortly after the decedent's death, it might well have a chilling effect on the  
11 making of anatomical gifts for the purpose of transplantation or therapy. This [act] retains  
12 the meaning of the term of "good faith" in the 1968 Act in order to encourage and  
13 facilitate transplantation. On the other hand, if a person acts in subjective "bad faith," the  
14 common law provides remedies.

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

21 When an individual at or near death who is not a donor has been referred to a  
22 procurement organization, the organization will seek out persons to discuss the possibility  
23 of making an anatomical gift if the individual had not made a refusal. Because the gift  
24 can only be made by the persons listed in Section 9 with the appropriate priority, Section  
25 18(c) provides that procurement organizations can rely on the representations of the  
26 individuals listed in Section 9(a)(2) through (8) as to their relationship to the donor or  
27 prospective donor. This immunity does not apply if the individual who documents a gift  
28 knows the representation is false.

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

38 **§2959. Law governing validity; choice of law as to execution of document of gift;**  
39 **presumption of validity**

40 **1. Validity of document.** A document of gift is valid if executed in accordance  
41 with:



1 prospective donor, whether the donor or prospective donor has made, amended or  
2 revoked an anatomical gift; and

3 C. Be accessible for purposes of paragraphs A and B 7 days a week on a 24-hour  
4 basis.

5 **4. Nondisclosure of personally identifiable information.** Personally identifiable  
6 information on a donor registry about a donor or prospective donor may not be used or  
7 disclosed without the express consent of the donor, prospective donor or the person that  
8 made the anatomical gift for any purpose other than to determine, at or near death of the  
9 donor or a prospective donor, whether the donor or prospective donor has made, amended  
10 or revoked an anatomical gift.

11 **5. Other registries.** This section does not prohibit any person from creating or  
12 maintaining a donor registry that is not established by or under contract with the State.  
13 However, the registry must comply with subsections 3 and 4.

14 **Uniform Comment**

15 (This is Section 20 of the Revised Uniform Anatomical Gift Act (2006).)

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

23 The section sets forth minimum requirements for a donor registry whether created by  
24 the state or not. These requirements are that the registry: (1) provide an electronic  
25 database that allows persons to make an anatomical gift by use of a statement or symbol;  
26 (2) be accessible to all procurement organizations at or near the time of death of a donor  
27 or prospective donor to determine whether the donor or prospective donor made,  
28 amended, or revoked an anatomical gift; and (3) be operational on a seven day a week,  
29 twenty-four hour basis.

30 Under subsection (d), a donor's personally identifiable information on a donor registry  
31 may not be used or disclosed without appropriate consent except to determine whether  
32 the donor or prospective donor has made, amended, or revoked an anatomical gift.

33 This section does not require states to create or contract for the creation of a donor  
34 registry. It merely gives them discretion to do so. Also, this section does not bar the  
35 creation of a private donor registry although it does require private registries to meet the  
36 requirements in subsection (c) and (d).

37 Although every donor registry meeting the requirements of Section 20 would also  
38 meet the Section 2(8) definition of a donor registry, the definition of a donor registry in

1 Section 2(8) is not tied to meeting the Section 20 requirements. This was purposeful. A  
2 donor registry as a place to make an anatomical gift should be broadly defined to respect  
3 the wishes of donors who make an anatomical gift on a registry that should, but failed to,  
4 comply with this section.

5 **§2961. Effect of anatomical gift on advance health-care directive**

6 **1. Definitions.** In this section, the following terms have the following meanings.

7 A. "Advance health-care directive" means a record signed by a prospective donor  
8 containing the prospective donor's direction concerning a health care decision for the  
9 prospective donor or a power of attorney for health care.

10 B. "Declaration" means a record signed by a prospective donor specifying the  
11 circumstances under which a life support system may be withheld or withdrawn.

12 C. "Health care decision" means any decision made regarding the health care of the  
13 prospective donor.

14 **2. Measures to ensure medical suitability.** If a prospective donor has a declaration  
15 or advance health-care directive, unless it expressly provides to the contrary, measures  
16 necessary to ensure the medical suitability of an organ for transplantation or therapy may  
17 not be withheld or withdrawn from the prospective donor.

18 **Uniform Comment**

19 (This is Section 21 of the Revised Uniform Anatomical Gift Act (2006).)

20 This section differs from Section 14(c). That section provides that measures necessary  
21 to ensure the medical suitability of a part not be withdrawn while an examination is being  
22 made to determine whether an individual who has been referred to a procurement  
23 organization has a part that could be the subject of an anatomical gift. If, following such  
24 an examination, it is determined by the procurement organization that the individual has a  
25 part that could be the subject of an anatomical gift, the individual is a prospective donor  
26 under this [act] unless the individual had signed a refusal. In light of the definition of a  
27 prospective donor, this section would also apply to a donor near death who has medically  
28 suitable organs for transplantation as determined by the organ procurement organization.  
29 See Section 2(22).

30 Measures necessary to insure the medical suitability of an organ for transplantation or  
31 therapy may not be withheld or withdrawn from a prospective donor who has an advance  
32 health-care directive or declaration unless the directive or declaration expressly provides  
33 to the contrary. The purpose of this section is to recognize a potential tension between the  
34 intent to make an anatomical gift and the intent to not have life support systems  
35 administered merely to prolong a life. The section presumes that for prospective donors  
36 the desire to save lives by making an anatomical gift trumps the desire to have life  
37 support systems withheld or withdrawn. Such measures are necessary for only a brief  
38 period of time. Individuals who desire to overcome this presumption can do so by express  
39 language in their advance health-care directive or declaration.

1 **§2962. Cooperation between Chief Medical Examiner and procurement**  
2 **organization**

3 **1. Cooperation to maximize opportunity.** The Chief Medical Examiner and a  
4 procurement organization shall cooperate to maximize the opportunity to recover  
5 anatomical gifts for the purpose of transplantation, therapy, research or education.

6 **2. Examination within compatible time period.** If the Chief Medical Examiner  
7 receives notice from a procurement organization that an anatomical gift might be  
8 available or was made with respect to a decedent whose body is under the jurisdiction of  
9 the Chief Medical Examiner and a postmortem examination is going to be performed,  
10 unless the Chief Medical Examiner denies recovery in accordance with section 2963, the  
11 Chief Medical Examiner or designee shall conduct a postmortem examination of the body  
12 or the part in a manner and within a time period compatible with its preservation for the  
13 purposes of the gift.

14 **3. Subject of an anatomical gift.** A part may not be removed from the body of a  
15 decedent under the jurisdiction of the Chief Medical Examiner for transplantation,  
16 therapy, research or education unless the part is the subject of an anatomical gift. The  
17 body of a decedent under the jurisdiction of the Chief Medical Examiner may not be  
18 delivered to a person for research or education unless the body is the subject of an  
19 anatomical gift. This subsection does not preclude the Chief Medical Examiner from  
20 performing the medicolegal investigation upon the body or parts of a decedent under the  
21 jurisdiction of the Chief Medical Examiner.

22 **Uniform Comment**

23 (This is Section 22 of the Revised Uniform Anatomical Gift Act (2006).)

24 This section includes a number of provisions designed to allow for the cooperation of  
25 procurement organizations and [coroners] [medical examiners] in obtaining bodies and  
26 parts that otherwise are the subject of an anatomical gift. Unlike prior law, this section  
27 does not empower [coroners] [medical examiners] to make an anatomical gift of the body  
28 or parts of a decedent. However, and although quite rare, if the [coroner] [medical  
29 examiner] is the person with authority to dispose of the decedent's body and has the  
30 priority to make a gift under Section 9, the [coroner] [medical examiner] could make an  
31 anatomical gift under Section 10.

32 **§2963. Facilitation of anatomical gift from decedent whose body is under**  
33 **jurisdiction of Chief Medical Examiner**

34 **1. Release of information.** Upon request of a procurement organization, the Chief  
35 Medical Examiner shall release to the procurement organization the name, contact  
36 information and available medical and social history of a decedent whose body is under  
37 the jurisdiction of the Chief Medical Examiner. If the decedent's body or part is  
38 medically suitable for transplantation, therapy, research or education, the Chief Medical



1 Examiner shall release postmortem examination results to the procurement organization.  
2 The procurement organization may make a subsequent disclosure of the postmortem  
3 examination results or other information received from the Chief Medical Examiner only  
4 if relevant to transplantation or therapy.

5 **2. Medicolegal examination.** The Chief Medical Examiner may conduct a  
6 medicolegal examination by reviewing all medical records, laboratory test results, x-rays,  
7 other diagnostic results and other information that any person possesses about a  
8 prospective donor or a donor whose body is under the jurisdiction of the Chief Medical  
9 Examiner which the Chief Medical Examiner determines may be relevant to the  
10 investigation.

11 **3. Provision of information.** A person that has any information requested by a  
12 Chief Medical Examiner pursuant to subsection 2 shall provide that information as  
13 expeditiously as possible to allow the Chief Medical Examiner to conduct the  
14 medicolegal investigation within a period compatible with the preservation of parts for  
15 purposes of transplantation, therapy, research or education.

16 **4. Removal not interfere with examination.** If an anatomical gift has been or  
17 might be made of a part of a decedent whose body is under the jurisdiction of the Chief  
18 Medical Examiner and a postmortem examination is not required, or the Chief Medical  
19 Examiner determines that a postmortem examination is required but that the recovery of  
20 the part that is the subject of an anatomical gift will not interfere with the examination,  
21 the Chief Medical Examiner and procurement organization shall cooperate in the timely  
22 removal of the part from the decedent for purposes of transplantation, therapy, research or  
23 education.

24 **5. Removal may interfere with examination.** If an anatomical gift of a part from  
25 the decedent under the jurisdiction of the Chief Medical Examiner has been or might be  
26 made, but the Chief Medical Examiner initially believes that the recovery of the part  
27 could interfere with the postmortem investigation into the decedent's cause or manner of  
28 death, the Chief Medical Examiner shall consult with the procurement organization or  
29 physician or technician designated by the procurement organization about the proposed  
30 recovery. After consultation, the Chief Medical Examiner may allow recovery.

31 **6. Process if conflict.** Following the consultation under subsection 5, in the absence  
32 of mutually agreed upon protocols to resolve conflict between the Chief Medical  
33 Examiner and the procurement organization, if the Chief Medical Examiner intends to  
34 deny recovery, the Chief Medical Examiner or designee, at the request of the  
35 procurement organization, shall attend the removal procedure for the part before making  
36 a final determination not to allow the procurement organization to recover the part.  
37 During the removal procedure, the Chief Medical Examiner or designee may allow  
38 recovery by the procurement organization to proceed or, if the Chief Medical Examiner  
39 or designee reasonably believes that the part may be involved in determining the  
40 decedent's cause or manner of death, deny recovery by the procurement organization.

41 **7. If recovery denied.** If the Chief Medical Examiner or designee denies recovery  
42 under subsection 6, the Chief Medical Examiner or designee shall:



