

HOUSE CS FOR CS FOR SS FOR SENATE BILL NO. 38(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/28/97

Referred: Finance

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to anatomical gifts, living wills, and do not resuscitate orders."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 * Section 1. AS 13.50.010(a) is amended to read:

4 (a) A competent person [OF SOUND MIND] who is 18 or more years of age
5 may make a gift to take effect upon death [,] of all or a part of the person's body for
6 a purpose specified in AS 13.50.020.

7 * Sec. 2. AS 13.50.030(b) is repealed and reenacted to read:

8 (b) A gift of all or a part of the body under AS 13.50.010(a) may be made by
9 a document other than a will, and including a declaration under AS 18.12. The gift
10 takes effect upon the death of the donor. The document, which may be a card
11 designed to be carried on the person, shall be signed by the donor, or another person
12 at the donor's direction. If signed by another person at the donor's direction, the
13 signer shall sign in the presence of two persons or a person who is qualified to take
14 acknowledgments under AS 09.63.010. Delivery of the document of gift during the
15 donor's lifetime is not necessary to make the gift valid.

* **Sec. 3.** AS 13.50.030(d) is amended to read:

(d) The donor may designate in a will, card, or other document of gift, **including a declaration under AS 18.12,** the surgeon or physician to carry out the appropriate procedure for removing or transplanting a part of the decedent's body. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon, **any** [OR] physician, **or any appropriate Alaska organ or tissue bank,** for the purpose of removing or transplanting a part of the decedent's body.

* **Sec. 4.** AS 13.50.030 is amended by adding a new subsection to read:

(f) A gift may, but need not be, in the following form:

In the event of my death, I donate the following part(s)
of my body for the purposes identified in AS 13.50.020:

Tissue:

_____ Eyes
_____ Bone and connective tissue
_____ Skin
_____ Heart
_____ Other: _____

Limitations: _____

Organ:

_____ Heart
_____ Kidney(s)
_____ Liver
_____ Lung(s)
_____ Pancreas
Other: _____.

I designate _____ (name of surgeon or physician)

to carry out the appropriate procedure(s) for removing or
transplanting the body part(s) identified above.

* **Sec. 5.** AS 13.50.050 is amended by adding a new subsection to read:

(d) A gift made in a declaration under AS 18.12 may be amended as provided

in (a) of this section, and may be revoked as provided in AS 18.12.020(a) or in (a) of this section.

* **Sec. 6.** AS 13.50 is amended by adding a new section to read:

Sec. 13.50.075. Recognition of gifts executed, issued, or authorized in other states. A gift executed, issued, or authorized in another state or a territory or possession of the United States in compliance with the law of that jurisdiction is effective for the purposes of this chapter.

* **Sec. 7.** AS 18.12.010(a) is repealed and reenacted to read:

(a) A competent person who is at least 18 years old may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn from that person. The declaration is given operative effect only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions, except that, if the declaration contains an anatomical gift under AS 13.50, the gift takes effect upon the death of the person. The declaration shall be signed by the declarant, or another person at the declarant's direction. If signed by another person at the declarant's direction, the signer shall sign in the presence of two persons or a person who is qualified to take acknowledgements under AS 09.63.010. A person may not charge a fee for preparing a declaration.

* **Sec. 8.** AS 18.12.010(b) is amended to read:

(b) **Except as provided under AS 13.50.014 - 13.50.016 for an anatomical gift contained in the declaration, it** [IT] is the responsibility of the declarant to provide a copy of the declaration to the declarant's physician. A physician or other health care provider who is provided a copy of the declaration shall make it a part of the declarant's medical records.

* **Sec. 9.** AS 18.12.010(c) is amended to read:

(c) A declaration may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures.

If my condition is terminal and I am unable to participate in

decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. I ☐ do ☐ do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.

Notwithstanding the other provisions of this declaration, if I have donated an organ under this declaration or by another method, and if I am in a hospital when a do not resuscitate order is to be implemented for me, I do not want the do not resuscitate order to take effect until the donated organ can be evaluated to determine if the organ is suitable for donation.

OPTIONAL: In the event of my death, I donate the following part(s) of my body for the purposes identified in AS 13.50.020:

Tissue:

Eyes

Bone and connective tissue

Skin

Heart

Other: _____

Limitations: _____

Organ:

Heart

Kidney(s)

Liver

Lung(s)

Pancreas

Other: _____.

Signed this _____ day of _____, _____.

Signature _____

Place _____

If another person is to sign for the declarant at the declarant's direction, the person signing for the declarant must sign in the presence of two persons or a person who is qualified to take acknowledgments under AS 09.63.010. The witness form below may be used for the two witnesses. The acknowledgement form below may be used for the person qualified to take acknowledgements. [THE DECLARANT IS KNOWN TO ME AND VOLUNTARILY SIGNED OR VOLUNTARILY DIRECTED ANOTHER TO SIGN THIS DOCUMENT IN MY PRESENCE.]

WITNESS FORM

Witness _____

Address _____

Witness _____

Address _____

State of _____

_____ Judicial District

ACKNOWLEDGEMENT FORM

The foregoing instrument was acknowledged before me this (date) by (name of person who acknowledged).

Signature of Person Taking

Acknowledgement

Title or Rank

Serial Number, if any

[THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER AS 09.63.010].

* **Sec. 10.** AS 18.12.010(d) is amended to read:

(d) A physician or health care provider may presume, in the absence of actual

notice to the contrary, that the declaration complies with this chapter, that an anatomical gift in the declaration complies with this chapter and AS 13.50, and that the declaration, including any anatomical gift contained in the declaration, is valid.

* **Sec. 11.** AS 18.12.020(a) is amended to read:

(a) Except as provided in AS 13.50.050 for an anatomical gift, a [A] declaration may be revoked at any time and in any manner by which the declarant is able to communicate an intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated.

* **Sec. 12.** AS 18.12.035 is amended by adding new subsections to read:

(d) Notwithstanding (c) of this section, if a person has made an anatomical gift of an organ under AS 13.50 or this chapter, and is in a hospital when a do not resuscitate order is to be implemented for the person, the do not resuscitate order may not be implemented until the donated organ can be evaluated to determine if it is suitable for donation.

(e) A physician may not revoke a do not resuscitate order at the request of a person, and a person may not make a do not resuscitate order ineffective, unless the person making the request or proposing to make the order ineffective is the person for whom the order has been issued, or, if the person for whom the order has been issued is not capable of expressing an opinion on the subject,

(1) the parent or guardian of the person for whom the order has been issued if the person for whom the order has been issued is under 18 years of age; or

(2) a person to whom the person for whom the order has been issued has communicated the decision to make the order ineffective.

* **Sec. 13.** AS 18.12.037 is amended to read:

Sec. 18.12.037. Living will, organ donation, and DNR identification. The Department of Health and Social Services shall develop standardized designs and symbols for DNR identification cards, forms, necklaces, and bracelets that signify,

when carried or worn, that the possessor has executed a declaration under this chapter, that the declaration contains an anatomical gift, or that the possessor is a patient for whom a physician has issued a do not resuscitate order.

* **Sec. 14.** AS 18.12.040(a) is amended to read:

(a) A qualified patient or a patient for whom a physician has issued a do not resuscitate order has the right to make decisions regarding use of cardiopulmonary resuscitation and other life-sustaining procedures as long as the patient is able to do so. If a qualified patient or patient for whom a physician has issued a do not resuscitate order is not able to make these decisions, the declaration or do not resuscitate protocol governs decisions regarding use of cardiopulmonary resuscitation and other life-sustaining procedures, unless the do not resuscitate order is revoked or made ineffective under AS 18.12.035(e).

* **Sec. 15.** AS 18.12.060(a) is amended to read:

(a) In the absence of actual notice of the revocation of a declaration or do not resuscitate order, as applicable, the following, while acting in accordance with the do not resuscitate protocol adopted under AS 18.12.035 or with the other requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(1) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient or the withholding or withdrawal of cardiopulmonary resuscitation from a patient for whom a do not resuscitate order has been issued or who possesses DNR identification;

(2) a person who participates in the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures under the direction or with the authorization of a physician or upon discovery of DNR identification upon a person;

(3) persons, including emergency medical technicians, who cause or participate in providing cardiopulmonary resuscitation or other life-sustaining procedures under AS 18.12.035(d) or because a person has made a do not resuscitate order ineffective under AS 18.12.035(e) [AFTER AN ORAL OR WRITTEN REQUEST COMMUNICATED TO THEM BY A PERSON WHO

POSSESSES DNR IDENTIFICATION];

(4) the health care facility in which the providing, withholding, or withdrawal occurs.

* **Sec. 16.** AS 18.12.090 is amended to read:

Sec. 18.12.090. Recognition of declarations and orders executed, [OR] issued, or authorized in other states. A declaration, including a declaration containing an anatomical gift, do not resuscitate order, or DNR identification executed, issued, or authorized in another state or a territory or possession of the United States in compliance with the law of that jurisdiction is effective for purposes of this chapter.

* **Sec. 17.** AS 18.12.100 is amended by adding a new paragraph to read:

(12) "anatomical gift" means an anatomical gift under AS 13.50.

* **Sec. 18.** AS 18.65.311 is amended to read:

Sec. 18.65.311. Anatomical gift or living will. (a) The department shall provide, at the time that an identification card is issued, a form for a document by which the card holder may make an anatomical gift under AS 13.50 (Uniform Anatomical Gifts Act) **or a living will under AS 18.12 (Living Wills and Do Not Resuscitate Orders)**. The document (1) may not be larger than an identification card, (2) must contain sufficient space for the signature of two witnesses **or a person who is qualified to take acknowledgments under AS 09.63.010**, [TO THE DONOR'S ACT IF THE DONOR CANNOT SIGN, AND] (3) must **use the forms and designs developed under AS 18.12.037**, and (4) **must** provide a means by which the **card holder** [DONOR] may cancel the gift **or the living will**. If the document [MAKING AN ANATOMICAL GIFT] is executed by the applicant, it shall be sealed in plastic and attached to the identification card. A symbol **developed under AS 18.12.037** indicating the existence of the anatomical gift **or living will** document must be displayed in the lower right-hand corner on the face of the identification card.

(b) An employee of the department who processes an identification card application, other than an application received by mail, shall ask the applicant orally whether the applicant wishes to execute an anatomical gift **or a living will**. The department shall, by placement of posters and brochures in the office where the

application is taken, and by oral advice, if requested, make known to the applicant the procedure necessary to execute a gift under AS 13.50 or a living will under AS 18.12.

* **Sec. 19.** AS 28.10.021(c) is amended to read:

(c) An employee of the department who processes an application for registration or renewal of registration, other than an application received by mail, shall ask the applicant orally whether the applicant wishes to execute an anatomical gift or a living will. The department shall make known to all applicants the procedure for executing a gift under AS 13.50 (Uniform Anatomical Gifts Act) or a living will under AS 18.12 (Living Wills and Do No Resuscitate Orders) by displaying posters in the offices in which applications are taken, by providing a brochure or other written information to each person who applies in person or by mail, and, if requested, by providing oral advice.

* **Sec. 20.** AS 28.15.061(d) is amended to read:

(d) An employee of the department who processes a driver's license application, other than an application received by mail, shall ask the applicant orally whether the applicant wishes to execute an anatomical gift or a living will. The department shall make known to all applicants the procedure for executing a gift under AS 13.50 (Uniform Anatomical Gifts Act) or a living will under AS 18.12 (Living Wills and Do Not Resuscitate Orders) by displaying posters in the offices in which applications are taken, by providing a brochure or other written information to each person who applies in person or by mail, and, if requested, by providing oral advice.

* **Sec. 21.** AS 28.15.111(b) is amended to read:

(b) The department shall provide, at the time that an operator's license is issued, a form for a document by which the owner of a license may make an anatomical gift under AS 13.50 or a living will under AS 18.12. The document (1) may not be larger than an operator's license, (2) must contain sufficient space for the signature of two witnesses or a person who is qualified to take acknowledgments under AS 09.63.010, [TO THE DONOR'S ACT OF EXECUTION OF THE DOCUMENT, AND] (3) must use the forms and designs developed under AS 18.12.037, and (4) must provide a means by which the owner [DONOR] may cancel the gift or the living will. If the document [MAKING AN ANATOMICAL

1 GIFT] is executed by the applicant, it shall be sealed in plastic and attached to the
2 license. A symbol **developed under AS 18.12.037** indicating the existence of the
3 anatomical gift **or living will** document must be displayed in the lower right-hand
4 corner on the face of the driver's license.