

SENATE BILL NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR TAYLOR

Introduced: 1/13/97

Referred: HESS, Judiciary

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7 * **Sec. 2.** AS 13.50.030(b) is repealed and reenacted to read: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

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

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

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

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

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

12 Tissue:

13 _____ Eyes

14 _____ Bone and connective tissue

15 _____ Skin

16 _____ Heart

17 _____ Other: _____

18 Limitations: _____

19 Organ:

20 _____ Heart

21 _____ Kidney(s)

22 _____ Liver

23 _____ Lung(s)

24 _____ Pancreas

25 Other: _____.

26 I designate _____ (name of surgeon or physician)

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

29 * **Sec. 5.** AS 13.05.050 is amended by adding a new subsection to read:

30 (d) A gift made in a declaration under AS 18.12 may be amended as provided
 31 in (a) of this section, and may be revoked as provided in AS 18.12.020(a) or in (a) of

1 this section.

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

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

7 * **Sec. 7.** AS 18.12.010(a) is repealed and reenacted to read:

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 9 at any time directing that life-sustaining procedures be withheld or withdrawn from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

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

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

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

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

26 DECLARATION

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

30 If my condition is terminal and I am unable to participate in
 31 decisions regarding my medical treatment, I direct my attending

1 physician to withhold or withdraw procedures that merely prolong the
2 dying process and are not necessary to my comfort or to alleviate pain.
3 I [] do [] do not desire that nutrition or hydration (food and water)
4 be provided by gastric tube or intravenously if necessary. Signed this
5 _____ day of _____, _____.

6 Signature_____

7 Place_____

8 **If another person is to sign for the declarant, the person**
9 **signing for the declarant must sign in the presence of two persons**
10 **or a person who is qualified to take acknowledgments under**
11 **AS 09.63.010. The witness form below may be used for the two**
12 **witnesses. The acknowledgement form below may be used for the**
13 **person qualified to take acknowledgments.** [THE DECLARANT IS
14 KNOWN TO ME AND VOLUNTARILY SIGNED OR
15 VOLUNTARILY DIRECTED ANOTHER TO SIGN THIS
16 DOCUMENT IN MY PRESENCE.]

17 **WITNESS FORM**

18 Witness _____

19 Address _____

20 Witness _____

21 Address _____

22 State of _____

23 _____ Judicial District

24 **ACKNOWLEDGEMENT FORM**

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

27 _____

28 Signature of Person Taking

29 Acknowledgement

30 _____

31 Title or Rank

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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,** and is valid.

* **Sec. 11.** AS 18.12.010 is amended by adding a new subsection to read:

(e) If a declaration contains an anatomical gift, the language for the gift may be, but is not required to be, in the form described in AS 13.50.030(f).

* **Sec. 12.** 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. 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 18.12.090 is amended to read:

Sec. 18.12.090. Recognition of declarations and orders executed, [OR]

1 issued, or authorized in other states. A declaration, including a declaration
 2 containing an anatomical gift, do not resuscitate order, or DNR identification
 3 executed, issued, or authorized in another state or a territory or possession of the
 4 United States in compliance with the law of that jurisdiction is effective for purposes
 5 of this chapter.

6 * **Sec. 15.** AS 18.12.100 is amended by adding a new paragraph to read:

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

8 * **Sec. 16.** AS 18.65.311 is amended to read:

9 **Sec. 18.65.311. Anatomical gift, living will, or do not resuscitate order**
 10 **document.** (a) The department shall provide, at the time that an identification card
 11 is issued, a form for a document by which the card holder may make an anatomical
 12 gift under AS 13.50 (Uniform Anatomical Gifts Act) or a living will or do not
 13 resuscitate order under AS 18.12 (Living Wills and Do Not Resuscitate Orders).

14 The document (1) may not be larger than an identification card, (2) must contain
 15 sufficient space for the signature of two witnesses or a person who is qualified to
 16 take acknowledgments under AS 09.63.010, [TO THE DONOR'S ACT IF THE
 17 DONOR CANNOT SIGN, AND] (3) must use the forms and designs developed
 18 under AS 18.12.037, and (4) must provide a means by which the card holder
 19 [DONOR] may cancel the gift, the living will, or the do not resuscitate order. If
 20 the document [MAKING AN ANATOMICAL GIFT] is executed by the applicant, it
 21 shall be sealed in plastic and attached to the identification card. A symbol developed
 22 under AS 18.12.037 indicating the existence of the anatomical gift, living will, or do
 23 not resuscitate order document must be displayed in the lower right-hand corner on
 24 the face of the identification card.

25 (b) An employee of the department who processes an identification card
 26 application, other than an application received by mail, shall ask the applicant orally
 27 whether the applicant wishes to execute an anatomical gift, a living will, or a do not
 28 resuscitate order. The department shall, by placement of posters and brochures in the
 29 office where the application is taken, and by oral advice, if requested, make known to
 30 the applicant the procedure necessary to execute a gift under AS 13.50 or a living will
 31 or do not resuscitate order under AS 18.12.

1 * **Sec. 17.** AS 28.10.021(c) is amended to read:

2 (c) An employee of the department who processes an application for
3 registration or renewal of registration, other than an application received by mail, shall
4 ask the applicant orally whether the applicant wishes to execute an anatomical gift, **a**
5 **living will, or a do not resuscitate order.** The department shall make known to all
6 applicants the procedure for executing a gift under AS 13.50 (Uniform Anatomical
7 Gifts Act) **or a living will or do not resuscitate order under AS 18.12 (Living Wills**
8 **and Do No Resuscitate Orders)** by displaying posters in the offices in which
9 applications are taken, by providing a brochure or other written information to each
10 person who applies in person or by mail, and, if requested, by providing oral advice.

11 * **Sec. 18.** AS 28.15.061(d) is amended to read:

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

21 * **Sec. 19.** AS 28.15.111(b) is amended to read:

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

1 shall be sealed in plastic and attached to the license. A symbol **developed under**
2 **AS 18.12.037** indicating the existence of the anatomical gift, **living will, or do not**
3 **resuscitate order** document must be displayed in the lower right-hand corner on the
4 face of the driver's license.