

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 38(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/17/97
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7 * **Sec. 2.** AS 13.50.030(b) is repealed and reenacted to read: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.

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, **any** [OR]
7 physician, **or any appropriate Alaska organ or tissue bank,** for the purpose of
8 removing or transplanting a part of the decedent’s body.

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

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

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

13 Tissue:
14 _____ Eyes
15 _____ Bone and connective tissue
16 _____ Skin
17 _____ Heart
18 _____ Other: _____

19 Limitations: _____

20 Organ:
21 _____ Heart
22 _____ Kidney(s)
23 _____ Liver
24 _____ Lung(s)
25 _____ Pancreas
26 Other: _____.

27 I designate _____ (name of surgeon or physician)
28 to carry out the appropriate procedure(s) for removing or
29 transplanting the body part(s) identified above.

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

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

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

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

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

8 * **Sec. 7.** AS 18.12.010(a) is repealed and reenacted to read:

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10 at any time directing that life-sustaining procedures be withheld or withdrawn from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

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

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

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

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

27 DECLARATION

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

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

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

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

9 **Tissue:**

- 10 _____ **Eyes**
- 11 _____ **Bone and connective tissue**
- 12 _____ **Skin**
- 13 _____ **Heart**
- 14 _____ **Other:** _____

15 **Limitations:** _____

16 **Organ:**

- 17 _____ **Heart**
- 18 _____ **Kidney(s)**
- 19 _____ **Liver**
- 20 _____ **Lung(s)**
- 21 _____ **Pancreas**
- 22 **Other:** _____.

23 Signed this _____ day of _____, _____.

24 Signature _____

25 Place _____

26 **If another person is to sign for the declarant at the**
27 **declarant's direction, the person signing for the declarant must sign**
28 **in the presence of two persons or a person who is qualified to take**
29 **acknowledgments under AS 09.63.010. The witness form below**
30 **may be used for the two witnesses. The acknowledgement form**
31 **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]

1 declaration may be revoked at any time and in any manner by which the declarant is
 2 able to communicate an intent to revoke, without regard to mental or physical
 3 condition. A revocation is only effective as to the attending physician or any health
 4 care provider acting under the guidance of that physician upon communication to the
 5 physician or health care provider by the declarant or by another to whom the
 6 revocation was communicated.

7 * **Sec. 12.** AS 18.12.037 is amended to read:

8 **Sec. 18.12.037. Living will, organ donation, and DNR identification.** The
 9 Department of Health and Social Services shall develop standardized designs and
 10 symbols for DNR identification cards, forms, necklaces, and bracelets that signify,
 11 when carried or worn, that the possessor has executed a declaration under this chapter,
 12 **that the declaration contains an anatomical gift, or that the possessor** is a patient
 13 for whom a physician has issued a do not resuscitate order.

14 * **Sec. 13.** AS 18.12.090 is amended to read:

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

21 * **Sec. 14.** AS 18.12.100 is amended by adding a new paragraph to read:

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

23 * **Sec. 15.** AS 18.65.311 is amended to read:

24 **Sec. 18.65.311. Anatomical gift, living will, or do not resuscitate order**
 25 **document.** (a) The department shall provide, at the time that an identification card
 26 is issued, a form for a document by which the card holder may make an anatomical
 27 gift under AS 13.50 (Uniform Anatomical Gifts Act) **or a living will or do not**
 28 **resuscitate order under AS 18.12 (Living Wills and Do Not Resuscitate Orders).**
 29 The document (1) may not be larger than an identification card, (2) must contain
 30 sufficient space for the signature of two witnesses **or a person who is qualified to**
 31 **take acknowledgments under AS 09.63.010,** [TO THE DONOR'S ACT IF THE

1 DONOR CANNOT SIGN, AND] (3) must **use the forms and designs developed**
 2 **under AS 18.12.037, and (4) must** provide a means by which the **card holder**
 3 [DONOR] may cancel the gift, **the living will, or the do not resuscitate order**. If
 4 the document [MAKING AN ANATOMICAL GIFT] is executed by the applicant, it
 5 shall be sealed in plastic and attached to the identification card. A symbol **developed**
 6 **under AS 18.12.037** indicating the existence of the anatomical gift, **living will, or do**
 7 **not resuscitate order** document must be displayed in the lower right-hand corner on
 8 the face of the identification card.

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

16 * **Sec. 16.** AS 28.10.021(c) is amended to read:

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

26 * **Sec. 17.** AS 28.15.061(d) is amended to read:

27 (d) An employee of the department who processes a driver's license
 28 application, other than an application received by mail, shall ask the applicant orally
 29 whether the applicant wishes to execute an anatomical gift, **a living will, or a do not**
 30 **resuscitate order**. The department shall make known to all applicants the procedure
 31 for executing a gift under AS 13.50 (Uniform Anatomical Gifts Act) **or a living will**

1 **or do not resuscitate order under AS 18.12 (Living Wills and Do Not Resuscitate**
 2 **Orders)** by displaying posters in the offices in which applications are taken, by
 3 providing a brochure or other written information to each person who applies in person
 4 or by mail, and, if requested, by providing oral advice.

5 * **Sec. 18.** AS 28.15.111(b) is amended to read:

6 (b) The department shall provide, at the time that an operator's license is
 7 issued, a form for a document by which the owner of a license may make an
 8 anatomical gift under AS 13.50 **or a living will or do not resuscitate order under**
 9 **AS 18.12.** The document (1) may not be larger than an operator's license, (2) must
 10 contain sufficient space for the signature of two witnesses **or a person who is**
 11 **qualified to take acknowledgments under AS 09.63.010,** [TO THE DONOR'S ACT
 12 OF EXECUTION OF THE DOCUMENT, AND] (3) must **use the forms and designs**
 13 **developed under AS 18.12.037, and (4) must** provide a means by which the **owner**
 14 [DONOR] may cancel the gift, **the living will, or the do not resuscitate order.** If
 15 the document [MAKING AN ANATOMICAL GIFT] is executed by the applicant, it
 16 shall be sealed in plastic and attached to the license. A symbol **developed under**
 17 **AS 18.12.037** indicating the existence of the anatomical gift, **living will, or do not**
 18 **resuscitate order** document must be displayed in the lower right-hand corner on the
 19 face of the driver's license.