

SENATE CS FOR CS FOR HOUSE BILL NO. 196(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/1/08

Referred: Judiciary

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the handling of matters after a person's death, to the Uniform
2 Anatomical Gift Act, to anatomical gifts, to donations to the anatomical gift awareness
3 fund, to a registry of anatomical gifts, and to organizations that handle the procurement,
4 distribution, or storage of all or a part of an individual's body."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 13.12.517 is amended to read:

7 **Sec. 13.12.517. Penalty clause for contest.** A provision in a will purporting to
8 penalize an interested person for contesting the will or instituting other proceedings
9 relating to the estate is **enforceable even** [UNENFORCEABLE] if probable cause
10 exists for instituting proceedings.

11 * **Sec. 2.** AS 13.16.680(a) is amended to read:

12 (a) Thirty days after the death of a decedent, any person indebted to the
13 decedent or having possession of tangible personal property or an instrument
14 evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall

1 make payment of the indebtedness or deliver the tangible personal property or an
 2 instrument evidencing a debt, obligation, stock, or chose in action to a person claiming
 3 to be the successor of the decedent upon being presented an affidavit made by or on
 4 behalf of the successor stating that

5 (1) the [VALUE OF THE] entire estate, wherever located, less liens
 6 and encumbrances, **consists only of not more than**

7 **(A) vehicles subject to registration under AS 28.10.011 with**
 8 **a total value that does not exceed \$100,000; and**

9 **(B) personal property, other than vehicles described in (A)**
 10 **of this paragraph, that** does not exceed **\$100,000** [\$15,000];

11 (2) 30 days have elapsed since the death of the decedent;

12 (3) no application or petition for the appointment of a personal
 13 representative is pending or has been granted in any jurisdiction; and

14 (4) the claiming successor is entitled to payment or delivery of the
 15 property.

16 * **Sec. 3.** AS 13.16.700 is amended to read:

17 **Sec. 13.16.700. Settlement directed by court.** When a judge receives
 18 information that a person has died in the judge's judicial district leaving an estate **with**
 19 **property limited to the property described under AS 13.16.680(a)(1)** [OF \$15,000]
 20 or less and no qualified person has appeared to take charge of the assets, the judge
 21 may immediately appoint a person, corporation, or attorney to settle the estate in the
 22 manner provided for in AS 13.16.680 - 13.16.695.

23 * **Sec. 4.** AS 13.33.101 is amended by adding new subsections to read:

24 (d) The money or other benefits paid under a provision for a nonprobate
 25 transfer on death in a life insurance contract or a retirement plan are not subject to

26 (1) the debts of the individual who was insured under the life insurance
 27 contract or who was a participant in the retirement plan; or

28 (2) the claims of the creditors of the individual who was insured under
 29 the life insurance contract or who was a participant in the retirement plan.

30 (e) The provisions of (d) of this section apply even if

31 (1) the provision for a nonprobate transfer on death is contained in the

1 life insurance contract or the retirement plan and designates the person to whom the
 2 money or other benefits are to be paid if the person who is the owner or insured under
 3 the life insurance policy or the participant in the retirement plan does not select a
 4 beneficiary;

5 (2) the life insurance contract, retirement plan, or a provision for a
 6 nonprobate transfer on death in the life insurance contract or retirement plan, makes
 7 the money or other benefits payable, directly or indirectly, to

8 (A) a decedent's estate or the personal representative of a
 9 decedent's estate, except that if the decedent owes money for child support
 10 arrearages, for spousal support arrearages, or under AS 47.07.055, the
 11 provisions of (d) of this section do not apply; in this subparagraph, "personal
 12 representative" has the meaning given in AS 13.06.050;

13 (B) a trustee of a trust established under a will, except that if
 14 the decedent owes money for child support arrearages, for spousal support
 15 arrearages, or under AS 47.07.055, the provisions of (d) of this section do not
 16 apply; or

17 (C) a trustee of a trust instrument that is separate from the life
 18 insurance contract or retirement plan and that designates the ultimate
 19 beneficiary;

20 (3) a trust to which the money or other benefits are payable may be
 21 amended, revoked, or both amended and revoked, or is funded or unfunded; or

22 (4) the settlor of the trust to which the money or other benefits are
 23 payable has reserved all rights of ownership in the life insurance contract or under the
 24 retirement plan.

25 (f) The provisions of (d) of this section do not limit the rights of the owner of
 26 a life insurance contract to pledge or assign by contract the money or other benefits
 27 from a life insurance contract as collateral for the debts of the owner.

28 (g) In (d) of this section,

29 (1) "life insurance contract" means a life insurance policy, an annuity
 30 contract, an endowment contract, and a contract entered into by an insurance company
 31 in connection with, supplemental to, or in settlement of a life insurance policy, an

1 annuity contract, or an endowment contract;

2 (2) "retirement plan" means

3 (A) a retirement plan that is qualified under 26 U.S.C. 401(a),
4 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, 26 U.S.C. 408A, or 26
5 U.S.C. 409 (Internal Revenue Code); and

6 (B) the amounts held in the teachers' retirement system under
7 AS 14.25, judicial retirement system under AS 22.25, public employees'
8 retirement system under AS 39.35, or elected public officers' retirement system
9 under former AS 39.37.

10 * **Sec. 5.** AS 13.50.140 is amended to read:

11 **Sec. 13.50.140. Notification of cancellation.** (a) A donor whose motor vehicle
12 or identification document information is on a registry shall notify a procurement
13 organization or the department of the destruction or mutilation of the motor vehicle or
14 identification document or revocation of the gift under **AS 13.52.183** [AS 13.52.170]
15 in order to remove the donor's name from a registry. If the procurement organization
16 that is notified does not maintain a registry, the organization shall notify all
17 procurement organizations that do maintain a registry.

18 (b) The failure of a donor to make the notification under (a) of this section
19 does not affect the revocation of a gift under **AS 13.52.183** [AS 13.52.170].

20 * **Sec. 6.** AS 13.50.150(a) is amended to read:

21 (a) An applicant for a motor vehicle or identification document may donate \$1
22 or more to the fund to promote **in the state** the donation of body parts under AS 13.52
23 (Health Care Decisions Act). The donation is voluntary and may be declined by the
24 applicant. The department shall make available to all applicants information on the
25 importance of making gifts.

26 * **Sec. 7.** AS 13.50.160(b) is amended to read:

27 (b) The purposes of the fund are to promote gifts **in the state** under AS 13.52
28 and to administer the donation program established under AS 13.50.150.

29 * **Sec. 8.** AS 13.50.190(3) is amended to read:

30 (3) "donor" has the meaning given in **AS 13.52.268** [AS 13.52.390];

31 * **Sec. 9.** AS 13.50.190(8) is amended to read:

1 (8) "procurement organization" has the meaning given in
 2 **AS 13.52.390** [AS 13.52.200(i)];

3 * **Sec. 10.** AS 13.52.010(a) is amended to read:

4 (a) Except as provided in **AS 13.52.173** [AS 13.52.170(a)], an adult may give
 5 an individual instruction. Except as provided in **AS 13.52.177** [AS 13.52.170(b)], the
 6 instruction may be oral or written. The instruction may be limited to take effect only if
 7 a specified condition arises.

8 * **Sec. 11.** AS 13.52.010(k) is amended to read:

9 (k) **Except as provided in AS 13.52.247(a), an** [AN] advance health care
 10 directive, including an advance health care directive that is made in compliance with
 11 the laws of another state, is valid for purposes of this chapter if it complies with this
 12 chapter, regardless of where or when it was executed or communicated.

13 * **Sec. 12.** AS 13.52.020(b) is amended to read:

14 (b) Except in the case of mental illness under (c) of this section **and except as**
 15 **provided by AS 13.52.183**, a principal may revoke all or part of an advance health
 16 care directive, other than the designation of an agent, at any time and in any manner
 17 that communicates an intent to revoke.

18 * **Sec. 13.** AS 13.52.030(a) is amended to read:

19 (a) Except in the case of mental health treatment and except as provided by
 20 **AS 13.52.173 and 13.52.193** [AS 13.52.180(a) AND (b)], a surrogate may make a
 21 health care decision for a patient who is an adult if an agent or guardian has not been
 22 appointed or the agent or guardian is not reasonably available, and if the patient has
 23 been determined by the primary physician to lack capacity.

24 * **Sec. 14.** AS 13.52.030(c) is amended to read:

25 (c) Except as provided for anatomical gifts in **AS 13.52.173**
 26 [AS 13.52.170(b)], an adult may designate an individual to act as surrogate for that
 27 adult by personally informing the supervising health care provider. Except as provided
 28 by **AS 13.52.173 or 13.52.193** [AS 13.52.180(a) AND (b)], in the absence of a
 29 designation, or if the designee is not reasonably available, a member of the following
 30 classes of the patient's family who is reasonably available, in descending order of
 31 priority, may act as surrogate:

- 1 (1) the spouse, unless legally separated;
 2 (2) an adult child;
 3 (3) a parent; or
 4 (4) an adult sibling.

5 * **Sec. 15.** AS 13.52.030(d) is amended to read:

6 (d) Except as provided by (l) of this section or **AS 13.52.173 or 13.52.193**
 7 [AS 13.52.180(a) OR (b)], if none of the individuals eligible to act as surrogate under
 8 (c) of this section is reasonably available, an adult who has exhibited special care and
 9 concern for the patient, who is familiar with the patient's personal values, and who is
 10 reasonably available may act as surrogate.

11 * **Sec. 16.** AS 13.52.040(a) is amended to read:

12 (a) **Subject to AS 13.52.183, 13.52.193, and 13.52.203, a** [A] guardian shall
 13 comply with the ward's individual instructions and may not revoke a ward's advance
 14 health care directive executed before the ward's incapacity unless a court expressly
 15 authorizes the revocation.

16 * **Sec. 17.** AS 13.52.060(d) is amended to read:

17 (d) Except as provided in (e), (f), and (i) of this section **and by AS 13.52.253,**
 18 a health care provider, health care institution, or health care facility providing care to a
 19 patient shall comply with

20 (1) an individual instruction of the patient and with a reasonable
 21 interpretation of that instruction made by a person then authorized to make health care
 22 decisions for the patient; and

23 (2) a health care decision for the patient made by a person then
 24 authorized to make health care decisions for the patient to the same extent as if the
 25 decision had been made by the patient while having capacity.

26 * **Sec. 18.** AS 13.52 is amended by adding new sections to read:

27 **Sec. 13.52.173. Who may make anatomical gift before donor's death.**

28 Subject to AS 13.52.193, 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 AS 13.52.177 by

31 (1) the donor, if the donor is an adult or if the donor is a minor and is

1 (A) emancipated; or

2 (B) authorized under state law to apply for a driver's license
3 because the donor is at least 16 years of age;

4 (2) an agent of the donor, unless a durable power of attorney for health
5 care or another record prohibits the agent from making an anatomical gift;

6 (3) a parent of the donor, if the donor is an unemancipated minor;

7 (4) the donor's guardian; or

8 (5) a surrogate.

9 **Sec. 13.52.177. Manner of making anatomical gift before donor's death.**

10 (a) A donor may make an anatomical gift

11 (1) by authorizing a statement or symbol indicating that the donor has
12 made an anatomical gift to be imprinted on the donor's driver's license or identification
13 card;

14 (2) in a will;

15 (3) during a terminal condition of the donor, by any form of
16 communication addressed to at least two adults, at least one of whom is a disinterested
17 witness; or

18 (4) as provided in (b) of this section.

19 (b) A donor or other person authorized to make an anatomical gift under
20 AS 13.52.173 may make a gift by a donor card or another record signed by the donor
21 or another person making the gift or by authorizing that a statement or symbol
22 indicating that the donor has made an anatomical gift be included on a donor registry.
23 If the donor or another person is physically unable to sign a record, the record may be
24 signed by another individual at the direction of the donor or the other person and must

25 (1) be witnessed by at least two adults, at least one of whom is a
26 disinterested witness, who have signed at the request of the donor or the other person;
27 and

28 (2) state that the record has been signed and witnessed as provided in
29 (1) of this subsection.

30 (c) Revocation, suspension, expiration, or cancellation of a driver's license or
31 an identification card on which an anatomical gift is indicated does not invalidate the

1 gift.

2 (d) An anatomical gift made by will takes effect upon the donor's death
3 whether or not the will is probated. Invalidation of the will after the donor's death does
4 not invalidate the gift.

5 * **Sec. 19.** AS 13.52 is amended by adding new sections to read:

6 **Sec. 13.52.183. Amending or revoking anatomical gift before donor's**
7 **death.** (a) Except in the case of mental illness under AS 13.52.020(c), and subject to
8 AS 13.52.193, a donor or another person authorized to make an anatomical gift under
9 AS 13.52.173 may amend or revoke an anatomical gift by

10 (1) a record signed by

11 (A) the donor;

12 (B) the other person; or

13 (C) subject to (b) of this section, another individual acting at
14 the direction of the donor or the other person if the donor or other person is
15 physically unable to sign; or

16 (2) a later-executed document of gift that amends or revokes a
17 previous anatomical gift or portion of an anatomical gift, either expressly or by
18 inconsistency.

19 (b) A record signed under (a)(1)(C) of this section must

20 (1) be witnessed by at least two adults, at least one of whom is a
21 disinterested witness, who have signed at the request of the donor or the other person;
22 and

23 (2) state that it has been signed and witnessed as provided in (1) of this
24 subsection.

25 (c) Subject to AS 13.52.193, a donor or another person authorized to make an
26 anatomical gift under AS 13.52.173 may revoke an anatomical gift by the destruction
27 or cancellation of the document of gift, or the portion of the document of gift used to
28 make the gift, with the intent to revoke the gift.

29 (d) A donor may amend or revoke an anatomical gift that was not made in a
30 will by any form of communication during a terminal condition addressed to at least
31 two adults, at least one of whom is a disinterested witness.

1 (e) A donor who makes an anatomical gift in a will may amend or revoke the
 2 gift in the manner provided for amendment or revocation of wills or as provided in (a)
 3 of this section.

4 **Sec. 13.52.187. Refusal to make anatomical gift; effect of refusal.** (a) An
 5 individual may refuse to make an anatomical gift of the individual's body or part by

6 (1) a record signed by

7 (A) the individual; or

8 (B) subject to (b) of this section, another individual acting at
 9 the direction of the individual if the individual is physically unable to sign;

10 (2) the individual's will, whether or not the will is admitted to probate
 11 or invalidated after the individual's death; or

12 (3) any form of communication made by the individual during the
 13 individual's terminal condition addressed to at least two adults, at least one of whom is
 14 a disinterested witness.

15 (b) A record signed under (a)(1)(B) of this section must

16 (1) be witnessed by at least two adults, at least one of whom is a
 17 disinterested witness, who have signed at the request of the individual; and

18 (2) state that it has been signed and witnessed as provided in (1) of this
 19 subsection.

20 (c) An individual who has made a refusal may amend or revoke the refusal

21 (1) in the manner provided in (a) of this section for making a refusal;

22 (2) by subsequently making an anatomical gift under AS 13.52.177
 23 that is inconsistent with the refusal; or

24 (3) by destroying or canceling the record evidencing the refusal, or the
 25 portion of the record used to make the refusal, with the intent to revoke the refusal.

26 (d) Except as otherwise provided in AS 13.52.193(h), in the absence of an
 27 express, contrary indication by the individual set out in the refusal, an individual's
 28 unrevoked refusal to make an anatomical gift of the individual's body or part bars all
 29 other persons from making an anatomical gift of the individual's body or part.

30 * **Sec. 20.** AS 13.52 is amended by adding new sections to read:

31 **Sec. 13.52.193. Preclusive effect of anatomical gift, amendment, or**

1 **revocation.** (a) Except as otherwise provided in (g) of this section and subject to (f) of
2 this section, in the absence of an express, contrary indication by the donor, a person
3 other than the donor is barred from making, amending, or revoking an anatomical gift
4 of a donor's body or part if the donor made an anatomical gift of the donor's body or
5 part under AS 13.52.177 or an amendment to an anatomical gift of the donor's body or
6 part under AS 13.52.183.

7 (b) A donor's revocation of an anatomical gift of the donor's body or part
8 under AS 13.52.183 is not a refusal and does not bar another person specified in
9 AS 13.52.173 or 13.52.197 from making an anatomical gift of the donor's body or part
10 under AS 13.52.177 or 13.52.203.

11 (c) If a person other than the donor makes an unrevoked anatomical gift of the
12 donor's body or part under AS 13.52.177 or an amendment to an anatomical gift of the
13 donor's body or part under AS 13.52.183, another person may not make, amend, or
14 revoke the gift of the donor's body or part under AS 13.52.203.

15 (d) A revocation of an anatomical gift of a donor's body or part under
16 AS 13.52.183 by a person other than the donor does not bar another person from
17 making an anatomical gift of the body or part under AS 13.52.177 or 13.52.203.

18 (e) In the absence of an express, contrary indication by the donor or another
19 person authorized to make an anatomical gift under AS 13.52.173, an anatomical gift
20 of a part is not a refusal to give another part or a limitation on the making of an
21 anatomical gift of another part at a later time by the donor or another person.

22 (f) In the absence of an express, contrary indication by the donor or another
23 person authorized to make an anatomical gift under AS 13.52.173, an anatomical gift
24 of a part for one or more of the purposes set out in AS 13.52.173 is not a limitation on
25 the making of an anatomical gift of the part for any of the other purposes by the donor
26 or any other person under AS 13.52.177 or 13.52.203.

27 (g) If a donor who is an unemancipated minor dies, a parent of the donor who
28 is reasonably available may revoke or amend an anatomical gift of the donor's body or
29 part.

30 (h) If an unemancipated minor who signed a refusal dies, a parent of the minor
31 who is reasonably available may revoke the minor's refusal.

1 **Sec. 13.52.197. Who may make anatomical gift of decedent's body or part.**

2 (a) Subject to (b) and (c) of this section and unless barred by AS 13.52.187 or
3 13.52.193, an anatomical gift of a decedent's body or part for the purpose of
4 transplantation, therapy, research, or education may be made by any member of the
5 following classes of persons who is reasonably available, in the order of priority listed:

6 (1) an agent of the decedent at the time of death who could have made
7 an anatomical gift under AS 13.52.173(2) immediately before the decedent's death;

8 (2) the spouse of the decedent;

9 (3) adult children of the decedent;

10 (4) parents of the decedent;

11 (5) adult siblings of the decedent;

12 (6) adult grandchildren of the decedent;

13 (7) grandparents of the decedent;

14 (8) an adult who exhibited special care and concern for the decedent;

15 (9) the persons who were acting as the guardians of the person of the
16 decedent at the time of death; and

17 (10) any other person having the authority to dispose of the decedent's
18 body.

19 (b) If there is more than one member of a class listed in subsection (a)(1), (3),
20 (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an
21 anatomical gift may be made by a member of the class unless that member or a person
22 to whom the gift may pass under AS 13.52.207 knows of an objection by another
23 member of the class. If an objection is known, the gift may be made only by a majority
24 of the members of the class who are reasonably available.

25 (c) A person may not make an anatomical gift if, at the time of the decedent's
26 death, a person in a prior class under (a) of this section is reasonably available to make
27 or to object to the making of an anatomical gift.

28 * **Sec. 21.** AS 13.52 is amended by adding new sections to read:

29 **Sec. 13.52.203. Manner of making, amending, or revoking anatomical gift**
30 **of decedent's body or part.** (a) Notwithstanding AS 13.52.020, a person authorized
31 to make an anatomical gift under AS 13.52.197 may make an anatomical gift by a

1 document of gift signed by the person making the gift or by that person's oral
 2 communication that is electronically recorded or is contemporaneously reduced to a
 3 record and signed by the individual receiving the oral communication.

4 (b) Subject to (c) of this section, an anatomical gift by a person authorized
 5 under AS 13.52.197 may be amended or revoked orally or in a record by any member
 6 of a prior class who is reasonably available. If more than one member of the prior
 7 class is reasonably available, the gift made by a person authorized under AS 13.52.197
 8 may be

9 (1) amended only if a majority of the reasonably available members
 10 agree to the amending of the gift; or

11 (2) revoked only if a majority of the reasonably available members
 12 agree to the revoking of the gift or if they are equally divided as to whether to revoke
 13 the gift.

14 (c) Notwithstanding AS 13.52.020, a revocation under (b) of this section is
 15 effective only if, before an incision has been made to remove a part from the donor's
 16 body or before invasive procedures have begun to prepare the recipient, the
 17 procurement organization, transplant hospital, or physician or technician knows of the
 18 revocation.

19 **Sec. 13.52.207. Persons who may receive anatomical gift; purpose of**
 20 **anatomical gift.** (a) An anatomical gift may be made to the following persons named
 21 in the document of gift:

22 (1) a hospital, an accredited medical school, a dental school, a college,
 23 a university, an organ procurement organization, or another appropriate person, for
 24 research or education;

25 (2) subject to (b) of this section, an individual designated by the person
 26 making the anatomical gift if the individual is the recipient of the part;

27 (3) an eye bank or a tissue bank.

28 (b) If an anatomical gift to an individual under (a)(2) of this section cannot be
 29 transplanted into the individual, the part passes under (g) of this section in the absence
 30 of an express, contrary indication by the person making the anatomical gift.

31 (c) If an anatomical gift of one or more specific parts or of all parts is made in

1 a document of gift that does not name a person described in (a) of this section but
2 identifies the purpose for which an anatomical gift may be used, the following rules
3 apply:

4 (1) if the part is an eye and the gift is for the purpose of transplantation
5 or therapy, the gift passes to the appropriate eye bank;

6 (2) if the part is tissue and the gift is for the purpose of transplantation
7 or therapy, the gift passes to the appropriate tissue bank;

8 (3) if the part is an organ and the gift is for the purpose of
9 transplantation or therapy, the gift passes to the appropriate organ procurement
10 organization as custodian of the organ;

11 (4) if the part is an organ, an eye, or tissue and the gift is for the
12 purpose of research or education, the gift passes to the appropriate procurement
13 organization.

14 (d) For the purpose of (c) of this section, if there is more than one purpose of
15 an anatomical gift set out in the document of gift but the purposes are not set out in
16 any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift
17 cannot be used for transplantation or therapy, the gift may be used for research or
18 education.

19 (e) If an anatomical gift of one or more specific parts is made in a document of
20 gift that does not name a person described in (a) of this section and does not identify
21 the purpose of the gift, the gift may be used only for transplantation or therapy, and
22 the gift passes under (g) of this section.

23 (f) If a document of gift specifies only a general intent to make an anatomical
24 gift by words such as "donor," "organ donor," or "body donor," or by a symbol or
25 statement of similar import, the gift may be used only for transplantation or therapy,
26 and the gift passes under (g) of this section.

27 (g) For purposes of (b), (e), and (f) of this section, the following rules apply:

28 (1) if the part is an eye, the gift passes to the appropriate eye bank;

29 (2) if the part is tissue, the gift passes to the appropriate tissue bank;

30 (3) if the part is an organ, the gift passes to the appropriate organ
31 procurement organization as custodian of the organ.

1 (h) An anatomical gift of an organ for transplantation or therapy, other than an
 2 anatomical gift under (a)(2) of this section, passes to the organ procurement
 3 organization as custodian of the organ.

4 (i) If an anatomical gift does not pass under (a) - (h) of this section or the
 5 decedent's body or part is not used for transplantation, therapy, research, or education,
 6 custody of the body or part passes to the person under obligation to dispose of the
 7 body or part.

8 (j) A person may not accept an anatomical gift if the person knows that the
 9 gift was not effectively made under AS 13.52.177 or 13.52.203 or if the person knows
 10 that the decedent made a refusal under AS 13.52.187 that was not revoked. For
 11 purposes of this subsection, if a person knows that an anatomical gift was made on a
 12 document of gift, the person is considered to know of any amendment or revocation of
 13 the gift or any refusal to make an anatomical gift on the same document of gift.

14 (k) Except as otherwise provided in (a)(2) of this section, nothing in
 15 AS 13.52.173 - 13.52.268 affects the allocation of organs for transplantation or
 16 therapy.

17 * **Sec. 22.** AS 13.52 is amended by adding new sections to read:

18 **Sec. 13.52.213. Search and notification.** (a) The following persons shall
 19 make a reasonable search of an individual who the person reasonably believes is dead
 20 or near death for a document of gift or other information identifying the individual as a
 21 donor or as an individual who made a refusal:

22 (1) a law enforcement officer, a fire fighter, a paramedic, or another
 23 emergency rescuer finding the individual; and

24 (2) if another other source of the information is not immediately
 25 available, a hospital, as soon as practical after the individual's arrival at the hospital.

26 (b) If a document of gift or a refusal to make an anatomical gift is located by
 27 the search required by (a)(1) of this section and the individual or deceased individual
 28 to whom it relates is taken to a hospital, the person responsible for conducting the
 29 search shall send the document of gift or refusal to the hospital.

30 (c) Except as provided by AS 13.52.080 - 13.52.090, a person is not subject to
 31 criminal or civil liability for failing to discharge the duties imposed by this section but

1 may be subject to administrative sanctions.

2 **Sec. 13.52.217. Delivery of document of gift not required; right to**
 3 **examine.** (a) A document of gift need not be delivered during the donor's lifetime to
 4 be effective.

5 (b) On or after an individual's death, a person in possession of a document of
 6 gift or a refusal to make an anatomical gift with respect to the individual shall allow
 7 examination and copying of the document of gift or refusal by a person authorized to
 8 make or object to the making of an anatomical gift with respect to the individual or by
 9 a person to whom the gift could pass under AS 13.52.207.

10 * **Sec. 23.** AS 13.52 is amended by adding new sections to read:

11 **Sec. 13.52.223. Rights and duties of procurement organization and others.**

12 (a) When a hospital refers an individual at or near death to a procurement
 13 organization, the organization shall make a reasonable search of the records of the
 14 department and a donor registry.

15 (b) A procurement organization shall be allowed reasonable access to
 16 information in the records of the department to ascertain whether an individual at or
 17 near death is a donor.

18 (c) Except as provided by AS 13.52.253, when a hospital refers an individual
 19 at or near death to a procurement organization, the organization may conduct any
 20 reasonable examination necessary to ensure the medical suitability of a part that is or
 21 could be the subject of an anatomical gift for transplantation, therapy, research, or
 22 education from a donor or a prospective donor. Except as provided by AS 13.52.055
 23 or 13.52.253, during the examination period, measures necessary to ensure the medical
 24 suitability of the part may not be withheld or withdrawn, unless the hospital or
 25 procurement organization knows that the individual expressed a contrary intent.

26 (d) Unless prohibited by law other than AS 13.52.173 - 13.52.268, at any time
 27 after a donor's death, the person to whom a part passes under AS 13.52.207 may
 28 conduct any reasonable examination necessary to ensure the medical suitability of the
 29 body or part for its intended purpose.

30 (e) Unless prohibited by law other than AS 13.52.173 - 13.52.268, an
 31 examination under (c) or (d) of this section may include an examination of all medical

1 and dental records of the donor or prospective donor.

2 (f) Upon the death of a minor who was a donor or had signed a refusal, unless
3 a procurement organization knows the minor is emancipated, the procurement
4 organization shall conduct a reasonable search for the parents of the minor and provide
5 the parents with an opportunity to revoke or amend the anatomical gift or revoke the
6 refusal.

7 (g) Upon referral by a hospital under (a) of this section, a procurement
8 organization shall make a reasonable search for any person listed in AS 13.52.197
9 having priority to make an anatomical gift on behalf of a prospective donor. If a
10 procurement organization receives information that an anatomical gift to any other
11 person was made, amended, or revoked, it shall promptly advise the other person of all
12 relevant information.

13 (h) Subject to AS 13.52.207(i) and 13.52.257, the rights of the person to
14 whom a part passes under AS 13.52.207 are superior to the rights of all others with
15 respect to the part. The person may accept or reject an anatomical gift in whole or in
16 part. Subject to the terms of the document of gift and AS 13.52.173 - 13.52.268, a
17 person who accepts an anatomical gift of an entire body may allow embalming, burial,
18 or cremation, and use of remains in a funeral service. If the gift is of a part, the person
19 to whom the part passes under AS 13.52.207, on the death of the donor and before
20 embalming, burial, or cremation, shall cause the part to be removed without
21 unnecessary mutilation.

22 (i) The physician who attends the decedent at death and the physician who
23 determines the time of the decedent's death may not participate in the procedures for
24 removing or transplanting a part from the decedent.

25 (j) A physician or technician may remove a donated part from the body of a
26 donor that the physician or technician is qualified to remove.

27 **Sec. 13.52.227. Coordination of procurement and use.** A hospital in this
28 state shall enter into agreements or affiliations with procurement organizations for
29 coordination of procurement and use of anatomical gifts.

30 * **Sec. 24.** AS 13.52 is amended by adding a new section to read:

31 **Sec. 13.52.233. Sale or purchase of parts prohibited; charges allowed.** (a)

1 Except as otherwise provided in (b) of this section, a person who, for valuable
 2 consideration, knowingly purchases or sells a part for transplantation or therapy if
 3 removal of a part from an individual is intended to occur after the individual's death
 4 commits a class C felony.

5 (b) A person may charge a reasonable amount for the removal, processing,
 6 preservation, quality control, storage, transportation, implantation, or disposal of a
 7 part.

8 * **Sec. 25.** AS 13.52 is amended by adding new sections to read:

9 **Sec. 13.52.243. Immunity.** (a) Except as provided by AS 13.52.080 -
 10 13.52.090, a person who acts under AS 13.52.173 - 13.52.268 or with the applicable
 11 anatomical gift law of another state, or attempts in good faith to act under
 12 AS 13.52.173 - 13.52.268 or with the applicable anatomical gift law of another state,
 13 is not liable for the act in a civil action, a criminal prosecution, or an administrative
 14 proceeding.

15 (b) Except as provided by AS 13.52.080 - 13.52.090, a person making an
 16 anatomical gift and the donor's estate are not liable for any injury or damage that
 17 results from the making or use of the gift.

18 (c) In determining whether an anatomical gift has been made, amended, or
 19 revoked under AS 13.52.173 - 13.52.268, a person may rely on representations of an
 20 individual listed in AS 13.52.197(a)(2) - (8) relating to the individual's relationship to
 21 the donor or prospective donor unless the person knows that the representation is
 22 untrue.

23 **Sec. 13.52.247. Law governing validity; choice of law as to execution of**
 24 **document of gift; presumption of validity.** (a) Notwithstanding AS 13.52.010(k), a
 25 document of gift is valid if executed under

26 (1) AS 13.52.173 - 13.52.268;

27 (2) the laws of the state or country where it was executed; or

28 (3) the laws of the state or country where the person making the
 29 anatomical gift was domiciled, has a place of residence, or was a national at the time
 30 the document of gift was executed.

31 (b) If a document of gift is valid under this section, the law of this state

1 governs the interpretation of the document of gift.

2 (c) A person may presume that a document of gift or amendment of an
3 anatomical gift is valid unless that person knows that it was not validly executed or
4 was revoked.

5 * **Sec. 26.** AS 13.52 is amended by adding new sections to read:

6 **Sec. 13.52.253. Effect of anatomical gift on advance health care directive.**

7 Except as provided by AS 13.52.055, if a prospective donor has an advance health
8 care directive, and the terms of the directive and the express terms of a potential
9 anatomical gift are in conflict with regard to the administration of measures necessary
10 to ensure the medical suitability of a part for transplantation or therapy, the
11 prospective donor's attending physician and prospective donor shall confer to resolve
12 the conflict. If the prospective donor is incapable of resolving the conflict, an agent
13 acting under the prospective donor's declaration or directive, or, if none or the agent is
14 not reasonably available, another person authorized by law other than AS 13.52.173 -
15 13.52.268 to make health care decisions on behalf of the prospective donor, shall act
16 for the donor to resolve the conflict. The conflict shall be resolved as expeditiously as
17 possible. Information relevant to the resolution of the conflict may be obtained from
18 the appropriate procurement organization and any other person authorized to make an
19 anatomical gift for the prospective donor under AS 13.52.173 - 13.52.268. Before
20 resolution of the conflict, measures necessary to ensure the medical suitability of the
21 part may not be withheld or withdrawn from the prospective donor unless withholding
22 or withdrawing the measures conflicts with appropriate end-of-life care.

23 **Sec. 13.52.255. Cooperation between coroner, state medical examiner, and**
24 **procurement organization.** (a) A coroner and a state medical examiner shall
25 cooperate with procurement organizations to maximize the opportunity to recover
26 anatomical gifts for the purpose of transplantation, therapy, research, or education.

27 (b) If a coroner or a state medical examiner receives notice from a
28 procurement organization that an anatomical gift might be available or was made with
29 respect to a decedent whose body is under the jurisdiction of the coroner or state
30 medical examiner and a postmortem examination is going to be performed, unless the
31 coroner or state medical examiner denies recovery under AS 13.52.257, the coroner,

1 the state medical examiner, or a designee shall conduct a postmortem examination of
2 the body or the part in a manner and within a period compatible with its preservation
3 for the purposes of the gift.

4 (c) A part may not be removed from the body of a decedent under the
5 jurisdiction of a coroner or a state medical examiner for transplantation, therapy,
6 research, or education unless the part is the subject of an anatomical gift. The body of
7 a decedent under the jurisdiction of the coroner or state medical examiner may not be
8 delivered to a person for research or education unless the body is the subject of an
9 anatomical gift. This subsection does not preclude a coroner or the state medical
10 examiner from performing the medicolegal investigation on the body or parts of a
11 decedent under the jurisdiction of the coroner or state medical examiner.

12 **Sec. 13.52.257. Facilitation of anatomical gift from decedent whose body is**
13 **under jurisdiction of coroner or state medical examiner.** (a) On request of a
14 procurement organization, a coroner or the state medical examiner may release to the
15 procurement organization the name, contact information, and available medical and
16 social history of a decedent whose body is under the jurisdiction of the coroner or state
17 medical examiner. If the decedent's body or part is medically suitable for
18 transplantation, therapy, research, or education, the coroner or state medical examiner
19 shall release postmortem examination results to the procurement organization. The
20 procurement organization may make a subsequent disclosure of the postmortem
21 examination results or other information received from the coroner or state medical
22 examiner only if relevant to transplantation or therapy.

23 (b) The coroner or state medical examiner may conduct a medicolegal
24 examination by reviewing all medical records, laboratory test results, x-rays, other
25 diagnostic results, and other information that any person possesses about a donor or
26 prospective donor whose body is under the jurisdiction of the coroner or state medical
27 examiner that the coroner or state medical examiner determines may be relevant to the
28 investigation.

29 (c) A person who has any information requested by a coroner or the state
30 medical examiner under (b) of this section shall provide that information as
31 expeditiously as possible to allow the coroner or state medical examiner to conduct the

1 medicolegal investigation within a period compatible with the preservation of parts for
2 the purpose of transplantation, therapy, research, or education.

3 (d) If an anatomical gift has been or might be made of a part of a decedent
4 whose body is under the jurisdiction of the coroner or state medical examiner and a
5 postmortem examination is not required, or the coroner or state medical examiner
6 determines that a postmortem examination is required but that the recovery of the part
7 that is the subject of an anatomical gift will not interfere with the examination, the
8 coroner or state medical examiner and the procurement organization shall cooperate in
9 the timely removal of the part from the decedent for the purpose of transplantation,
10 therapy, research, or education.

11 (e) If an anatomical gift of a part from the decedent under the jurisdiction of
12 the coroner or state medical examiner has been or might be made, but the coroner or
13 state medical examiner initially believes that the recovery of the part could interfere
14 with the postmortem investigation into the decedent's cause or manner of death, the
15 coroner or state medical examiner may consult with the procurement organization, or
16 the physician or technician designated by the procurement organization, about the
17 proposed recovery. After consultation, the coroner or state medical examiner may
18 allow the recovery.

19 (f) If the coroner, the state medical examiner, or a designee denies recovery of
20 a part, the coroner, state medical examiner, or designee shall

21 (1) explain in a record the specific reasons for not allowing recovery of
22 the part;

23 (2) include the specific reasons in the records of the coroner or state
24 medical examiner; and

25 (3) provide a record with the specific reasons to the procurement
26 organization.

27 (g) If the coroner, the state medical examiner, or a designee allows recovery of
28 a part under (d) or (e) of this section, the procurement organization, on request, shall
29 cause the physician or technician who removes the part to provide the coroner or state
30 medical examiner with a record describing the condition of the part, a biopsy, a
31 photograph, and any other information and observations that would assist in the

1 postmortem examination.

2 (h) If a coroner, state medical examiner, or designee elects to be present at a
3 removal procedure, on request, the procurement organization requesting the recovery
4 of the part shall reimburse the coroner, state medical examiner, or designee for the
5 additional costs incurred in complying with this section.

6 * **Sec. 27.** AS 13.52 is amended by adding a new section to read:

7 **Sec. 13.52.263. Relation to Electronic Signatures in Global and National**
8 **Commerce Act.** AS 13.52.173 - 13.52.267 modify, limit, and supersede 15 U.S.C.
9 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), except
10 that AS 13.52.173 - 13.52.267 do not modify, limit or supersede 15 U.S.C. 7001, or
11 authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

12 * **Sec. 28.** AS 13.52 is amended by adding new sections to read:

13 **Sec. 13.52.267. Uniformity of application and construction.** In applying and
14 construing AS 13.52.173 - 13.52.263, consideration shall be given to the need to
15 promote uniformity of the law with respect to its subject matter among states that
16 enact it.

17 **Sec. 13.52.268. Definitions for AS 13.52.173 - 13.52.268.** Notwithstanding
18 AS 13.52.390, in AS 13.52.173 - 13.52.268,

19 (1) "adult" means an individual who is at least 18 years of age;

20 (2) "decedent" means a deceased individual whose body or part is or
21 may be the source of an anatomical gift; the term includes a stillborn infant and,
22 subject to restrictions imposed by law other than AS 13.52.173 - 13.52.168, a fetus;

23 (3) "department" means the Department of Administration;

24 (4) "disinterested witness" means a witness who is not

25 (A) the spouse, child, parent, sibling, grandchild, grandparent,
26 or guardian of the individual who makes, amends, revokes, or refuses to make
27 an anatomical gift;

28 (B) an adult who exhibited special care and concern for the
29 individual; or

30 (C) a person to whom an anatomical gift could pass under
31 AS 13.52.207;

1 (5) "document of gift" means a donor card or other record used to
2 make an anatomical gift, and includes a statement or symbol on a driver's license, an
3 identification card, or a donor registry;

4 (6) "donor" means an individual whose body or part is the subject of
5 an anatomical gift;

6 (7) "donor registry" means the donor registry created under
7 AS 13.50.110;

8 (8) "driver's license" means a license or permit issued by the
9 department under AS 28.15 to operate a vehicle, whether or not conditions are
10 attached to the license or permit;

11 (9) "eye bank" means a person who is licensed, accredited, or
12 regulated under federal or state law to engage in the recovery, screening, testing,
13 processing, storage, or distribution of human eyes or portions of human eyes;

14 (10) "guardian" means a person appointed by a court to make decisions
15 regarding the support, care, education, health, or welfare of an individual; the term
16 does not include a guardian ad litem;

17 (11) "hospital" means a facility licensed as a hospital under the law of
18 any state or a facility operated as a hospital by the United States, a state, or a
19 subdivision of a state;

20 (12) "identification card" means an identification card issued by the
21 Department of Administration under AS 18.65.310;

22 (13) "know" means to have actual knowledge;

23 (14) "minor" means an individual who is under 18 years of age;

24 (15) "organ procurement organization" means a person designated by
25 the United States Secretary of Health and Human Services as an organ procurement
26 organization;

27 (16) "parent" means a parent whose parental rights have not been
28 terminated;

29 (17) "person" means an individual, corporation, business trust, estate,
30 trust, partnership, limited liability company, association, joint venture, public
31 corporation, government or governmental subdivision, agency, or instrumentality, or

1 any other legal or commercial entity;

2 (18) "physician" means an individual authorized to practice medicine
3 or osteopathy under the law of any state;

4 (19) "procurement organization" means an eye bank, an organ
5 procurement organization, or a tissue bank;

6 (20) "prospective donor" means an individual who is dead or near
7 death and has been determined by a procurement organization to have a part that could
8 be medically suitable for transplantation, therapy, research, or education; the term
9 does not include an individual who has made a refusal;

10 (21) "reasonably available" means able to be contacted by a
11 procurement organization without undue effort and willing and able to act in a timely
12 manner consistent with existing medical criteria necessary for the making of an
13 anatomical gift;

14 (22) "recipient" means an individual into whose body a decedent's part
15 has been or is intended to be transplanted;

16 (23) "record" means information that is inscribed on a tangible
17 medium or that is stored in an electronic or another medium and is retrievable in
18 perceivable form;

19 (24) "refusal" means a record created under AS 13.52.187 that
20 expressly states an intent to bar other persons from making an anatomical gift of an
21 individual's body or part;

22 (25) "sign" means, with the present intent to authenticate or adopt a
23 record,

24 (A) to execute or adopt a tangible symbol; or

25 (B) to attach to or logically associate with the record an
26 electronic symbol, sound, or process;

27 (26) "state" means a state of the United States, the District of
28 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular
29 possession subject to the jurisdiction of the United States;

30 (27) "state medical examiner" means the state medical examiner
31 appointed under AS 12.65.015(a);

1 (28) "technician" means an individual determined to be qualified to
 2 remove or process parts by an appropriate organization that is licensed, accredited, or
 3 regulated under federal or state law; the term includes an enucleator;

4 (29) "tissue" means a portion of the human body other than an organ or
 5 an eye; the term does not include blood unless the blood is donated for the purpose of
 6 research or education;

7 (30) "tissue bank" means a person who is licensed, accredited, or
 8 regulated under federal or state law to engage in the recovery, screening, testing,
 9 processing, storage, or distribution of tissue;

10 (31) "transplant hospital" means a hospital that furnishes organ
 11 transplants and other medical and surgical specialty services required for the care of
 12 transplant patients.

13 * **Sec. 29.** AS 13.52.390(3) is amended to read:

14 (3) "anatomical gift" means [AN INDIVIDUAL INSTRUCTION
 15 THAT MAKES] a donation of all or a part of **a human** [AN INDIVIDUAL'S] body to
 16 take effect [UPON OR] after **the donor's** death **for the purpose of transplantation,**
 17 **therapy, research, or education;**

18 * **Sec. 30.** AS 13.52.390(30) is amended to read:

19 (30) "part" means an organ, tissue, **or** an eye [, A BONE, AN
 20 ARTERY, BLOOD, FLUID, OR ANOTHER PORTION] of a human **being** [BODY],
 21 except fetal tissue; **the term does not include the whole body;**

22 * **Sec. 31.** AS 18.65.311(b) is amended to read:

23 (b) An employee of the department who processes an identification card
 24 application, other than an application received by mail, shall ask the applicant orally
 25 whether the applicant wishes to execute an anatomical gift. The department shall, by
 26 placement of posters and brochures in the office where the application is taken, and by
 27 oral advice, if requested, make known to the applicant the method by which the
 28 cardholder may make an anatomical gift under AS 13.52. The department shall inform
 29 each applicant for an identification card in writing that, if the applicant executes a gift
 30 under AS 13.52 and if the gift is made with the registration, the department will
 31 transmit the information on the identification card to a donor registry created under

1 AS 13.50.110. The department shall also direct the applicant to notify a procurement
2 organization or the department under AS 13.50.140 if the identification card is
3 destroyed or mutilated or the gift is revoked under **AS 13.52.183** [AS 13.52.170]. The
4 department shall carry out the requirements of AS 13.50.100 - 13.50.190.

5 * **Sec. 32.** AS 28.10.021(c) is amended to read:

6 (c) An employee of the department who processes an application for
7 registration or renewal of registration, other than an application received by mail or an
8 application for registration under AS 28.10.152, shall ask the applicant orally whether
9 the applicant wishes to execute an anatomical gift. The department shall make known
10 to all applicants the procedure for executing an anatomical gift under AS 13.52
11 (Health Care Decisions Act) by displaying posters in the offices in which applications
12 are taken, by providing a brochure or other written information to each person who
13 applies in person or by mail, and, if requested, by providing oral advice. The
14 department shall inform each applicant in writing that, if the applicant executes a gift
15 under AS 13.52 and if the gift is made with the registration application, the department
16 will transmit the information on the registration to a donor registry created under
17 AS 13.50.110. The department shall also direct the applicant to notify a procurement
18 organization or the department under AS 13.50.140 if the registration is destroyed or
19 mutilated or the gift is revoked under **AS 13.52.183** [AS 13.52.170]. The department
20 shall carry out the requirements of AS 13.50.100 - 13.50.190.

21 * **Sec. 33.** AS 28.15.061(d) is amended to read:

22 (d) An employee of the department who processes a driver's license
23 application, other than an application received by mail, shall ask the applicant orally
24 whether the applicant wishes to execute an anatomical gift. The department shall make
25 known to all applicants the procedure for executing an anatomical gift under AS 13.52
26 (Health Care Decisions Act) by displaying posters in the offices in which applications
27 are taken, by providing a brochure or other written information to each person who
28 applies in person or by mail, and, if requested, by providing oral advice. The
29 department shall inform each applicant in writing that, if the applicant executes a gift
30 under AS 13.52 and if the gift is made with the driver's license application, the
31 department will transmit the information on the license to a donor registry created

1 under AS 13.50.110. The department shall also direct the applicant to notify a
 2 procurement organization or the department under AS 13.50.140 if the license is
 3 destroyed or mutilated or the gift is revoked under AS 13.52.183 [AS 13.52.170]. The
 4 department shall carry out the requirements of AS 13.50.100 - 13.50.190.

5 * **Sec. 34.** AS 28.15.111(b) is amended to read:

6 (b) The department shall provide a method, at the time that an operator's
 7 license is issued, by which the owner of a license may make an anatomical gift under
 8 AS 13.52. The method must provide a means by which the owner may cancel the
 9 anatomical gift. The department shall inform each applicant in writing that, if the
 10 applicant executes a gift under AS 13.52 and if the gift is made with the license, the
 11 department will transmit the information on the license to a donor registry created
 12 under AS 13.50.110. The department shall also direct the applicant to notify a
 13 procurement organization or the department under AS 13.50.140 if the license is
 14 destroyed or mutilated or the gift is revoked under AS 13.52.183 [AS 13.52.170]. The
 15 department shall carry out the requirements of AS 13.50.100 - 13.50.190.

16 * **Sec. 35.** AS 37.05.146(c) is amended by adding a new paragraph to read:

17 (82) donations to the anatomical gift awareness fund under
 18 AS 13.50.150.

19 * **Sec. 36.** AS 13.52.170, 13.52.180, 13.52.190, 13.52.200, 13.52.210, 13.52.220, 13.52.230,
 20 13.52.240, 13.52.250, 13.52.260, 13.52.265, 13.52.270, 13.52.280, 13.52.390(10),
 21 13.52.390(12), 13.52.390(13), and 13.52.390(41) are repealed.

22 * **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to
 23 read:

24 **APPLICABILITY.** (a) AS 13.16.680(a), as amended by sec. 2 of this Act, and
 25 AS 13.16.700, as amended by sec. 3 of this Act, apply to a decedent if the decedent dies on or
 26 after the effective date of this Act.

27 (b) AS 13.33.101(d), (e), (f), and (g), as added by sec. 4 of this Act, apply to
 28 provisions for a nonprobate transfer on death in a life insurance contract or a retirement plan
 29 that are made before, on, or after the effective date of this Act. In this subsection, "life
 30 insurance contract" and "retirement plan" have the meanings given in AS 13.33.101(g), added
 31 by sec. 4 of this Act.

1 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 CONTINUING EFFECT OF EXISTING ANATOMICAL GIFTS. An anatomical gift
4 made under AS 13.52.170 - 13.52.280, repealed by this Act, continues in effect under
5 AS 13.52.173 - 13.52.268, enacted by secs. 18 - 28 of this Act, until the anatomical gift is
6 revoked under AS 13.52.173 - 13.52.268.