

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/8/08

Referred: Rules

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 13.16.680(a) is amended to read:

7 (a) Thirty days after the death of a decedent, any person indebted to the
8 decedent or having possession of tangible personal property or an instrument
9 evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall
10 make payment of the indebtedness or deliver the tangible personal property or an
11 instrument evidencing a debt, obligation, stock, or chose in action to a person claiming
12 to be the successor of the decedent upon being presented an affidavit made by or on
13 behalf of the successor stating that

14 (1) the [VALUE OF THE] entire estate, wherever located, less liens

1 and encumbrances, **consists only of not more than**

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

4 **(B) personal property, other than vehicles described in (A)**
 5 **of this paragraph, that** does not exceed **\$50,000** [\$15,000];

6 (2) 30 days have elapsed since the death of the decedent;

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

9 (4) the claiming successor is entitled to payment or delivery of the
 10 property.

11 * **Sec. 2.** AS 13.16.700 is amended to read:

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

18 * **Sec. 3.** AS 13.33.101 is amended by adding new subsections to read:

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

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

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

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

26 (1) the provision for a nonprobate transfer on death is contained in the
 27 life insurance contract or the retirement plan and designates the person to whom the
 28 money or other benefits are to be paid if the person who is the owner or insured under
 29 the life insurance policy or the participant in the retirement plan does not select a
 30 beneficiary;

31 (2) the life insurance contract, retirement plan, or a provision for a

1 nonprobate transfer on death in the life insurance contract or retirement plan, makes
2 the money or other benefits payable, directly or indirectly, to

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

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

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

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

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

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

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

24 (1) "life insurance contract" means a life insurance policy, an annuity
25 contract, an endowment contract, and a contract entered into by an insurance company
26 in connection with, supplemental to, or in settlement of a life insurance policy, an
27 annuity contract, or an endowment contract;

28 (2) "retirement plan" means

29 (A) a retirement plan that is qualified under 26 U.S.C. 401(a),
30 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, 26 U.S.C. 408A, or 26
31 U.S.C. 409 (Internal Revenue Code); and

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

* **Sec. 4.** AS 13.50.140 is amended to read:

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

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

* **Sec. 5.** AS 13.50.150(a) is amended to read:

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

* **Sec. 6.** AS 13.50.160(b) is amended to read:

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

* **Sec. 7.** AS 13.50.190(3) is amended to read:

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

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

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

* **Sec. 9.** AS 13.52.010(a) is amended to read:

(a) Except as provided in AS 13.52.173 [AS 13.52.170(a)], an adult may give an individual instruction. Except as provided in AS 13.52.177 [AS 13.52.170(b)], the

1 instruction may be oral or written. The instruction may be limited to take effect only if
2 a specified condition arises.

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

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

8 * **Sec. 11.** AS 13.52.020(b) is amended to read:

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

13 * **Sec. 12.** AS 13.52.030(a) is amended to read:

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

19 * **Sec. 13.** AS 13.52.030(c) is amended to read:

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

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

31 * **Sec. 14.** AS 13.52.030(d) is amended to read:

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

6 * **Sec. 15.** AS 13.52.040(a) is amended to read:

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

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

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

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

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

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

22 **Sec. 13.52.173. Who may make anatomical gift before donor's death.**
 23 Subject to AS 13.52.193, an anatomical gift of a donor's body or part may be made
 24 during the life of the donor for the purpose of transplantation, therapy, research, or
 25 education in the manner provided in AS 13.52.177 by

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

27 (A) emancipated; or

28 (B) authorized under state law to apply for a driver's license

29 because the donor is at least 16 years of age;

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

- 1 (3) a parent of the donor, if the donor is an unemancipated minor;
 2 (4) the donor's guardian; or
 3 (5) a surrogate.

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

5 (a) A donor may make an anatomical gift

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

9 (2) in a will;

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

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

14 (b) A donor or other person authorized to make an anatomical gift under
 15 AS 13.52.173 may make a gift by a donor card or another record signed by the donor
 16 or another person making the gift or by authorizing that a statement or symbol
 17 indicating that the donor has made an anatomical gift be included on a donor registry.
 18 If the donor or another person is physically unable to sign a record, the record may be
 19 signed by another individual at the direction of the donor or the other person and 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 the record has been signed and witnessed as provided in
 24 (1) of this subsection.

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

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

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

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

5 (1) a record signed by

6 (A) the donor;

7 (B) the other person; or

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

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

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

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

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

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

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

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

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

- 1 (1) a record signed by
 2 (A) the individual; or
 3 (B) subject to (b) of this section, another individual acting at
 4 the direction of the individual if the individual is physically unable to sign;
 5 (2) the individual's will, whether or not the will is admitted to probate
 6 or invalidated after the individual's death; or
 7 (3) any form of communication made by the individual during the
 8 individual's terminal condition addressed to at least two adults, at least one of whom is
 9 a disinterested witness.

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

- 11 (1) be witnessed by at least two adults, at least one of whom is a
 12 disinterested witness, who have signed at the request of the individual; and
 13 (2) state that it has been signed and witnessed as provided in (1) of this
 14 subsection.

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

- 16 (1) in the manner provided in (a) of this section for making a refusal;
 17 (2) by subsequently making an anatomical gift under AS 13.52.177
 18 that is inconsistent with the refusal; or
 19 (3) by destroying or canceling the record evidencing the refusal, or the
 20 portion of the record used to make the refusal, with the intent to revoke the refusal.

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

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

26 **Sec. 13.52.193. Preclusive effect of anatomical gift, amendment, or**
 27 **revocation.** (a) Except as otherwise provided in (g) of this section and subject to (f) of
 28 this section, in the absence of an express, contrary indication by the donor, a person
 29 other than the donor is barred from making, amending, or revoking an anatomical gift
 30 of a donor's body or part if the donor made an anatomical gift of the donor's body or
 31 part under AS 13.52.177 or an amendment to an anatomical gift of the donor's body or

1 part under AS 13.52.183.

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

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

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

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

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

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

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

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

28 (a) Subject to (b) and (c) of this section and unless barred by AS 13.52.187 or
29 13.52.193, an anatomical gift of a decedent's body or part for the purpose of
30 transplantation, therapy, research, or education may be made by any member of the
31 following classes of persons who is reasonably available, in the order of priority listed:

- 1 (1) an agent of the decedent at the time of death who could have made
 2 an anatomical gift under AS 13.52.173(2) immediately before the decedent's death;
 3 (2) the spouse of the decedent;
 4 (3) adult children of the decedent;
 5 (4) parents of the decedent;
 6 (5) adult siblings of the decedent;
 7 (6) adult grandchildren of the decedent;
 8 (7) grandparents of the decedent;
 9 (8) an adult who exhibited special care and concern for the decedent;
 10 (9) the persons who were acting as the guardians of the person of the
 11 decedent at the time of death; and
 12 (10) any other person having the authority to dispose of the decedent's
 13 body.

14 (b) If there is more than one member of a class listed in subsection (a)(1), (3),
 15 (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an
 16 anatomical gift may be made by a member of the class unless that member or a person
 17 to whom the gift may pass under AS 13.52.207 knows of an objection by another
 18 member of the class. If an objection is known, the gift may be made only by a majority
 19 of the members of the class who are reasonably available.

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

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

24 **Sec. 13.52.203. Manner of making, amending, or revoking anatomical gift**
 25 **of decedent's body or part.** (a) Notwithstanding AS 13.52.020, a person authorized
 26 to make an anatomical gift under AS 13.52.197 may make an anatomical gift by a
 27 document of gift signed by the person making the gift or by that person's oral
 28 communication that is electronically recorded or is contemporaneously reduced to a
 29 record and signed by the individual receiving the oral communication.

30 (b) Subject to (c) of this section, an anatomical gift by a person authorized
 31 under AS 13.52.197 may be amended or revoked orally or in a record by any member

1 of a prior class who is reasonably available. If more than one member of the prior
 2 class is reasonably available, the gift made by a person authorized under AS 13.52.197
 3 may be

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

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

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

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

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

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

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

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

26 (c) If an anatomical gift of one or more specific parts or of all parts is made in
 27 a document of gift that does not name a person described in (a) of this section but
 28 identifies the purpose for which an anatomical gift may be used, the following rules
 29 apply:

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

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

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

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

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

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

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

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

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

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

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

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

30 (i) If an anatomical gift does not pass under (a) - (h) of this section or the
31 decedent's body or part is not used for transplantation, therapy, research, or education,

1 custody of the body or part passes to the person under obligation to dispose of the
2 body or part.

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

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

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

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

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

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

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

25 (c) Except as provided by AS 13.52.080 - 13.52.090, a person is not subject to
26 criminal or civil liability for failing to discharge the duties imposed by this section but
27 may be subject to administrative sanctions.

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

31 (b) On or after an individual's death, a person in possession of a document of

1 gift or a refusal to make an anatomical gift with respect to the individual shall allow
2 examination and copying of the document of gift or refusal by a person authorized to
3 make or object to the making of an anatomical gift with respect to the individual or by
4 a person to whom the gift could pass under AS 13.52.207.

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

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

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

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

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

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

25 (e) Unless prohibited by law other than AS 13.52.173 - 13.52.268, an
26 examination under (c) or (d) of this section may include an examination of all medical
27 and dental records of the donor or prospective donor.

28 (f) Upon the death of a minor who was a donor or had signed a refusal, unless
29 a procurement organization knows the minor is emancipated, the procurement
30 organization shall conduct a reasonable search for the parents of the minor and provide
31 the parents with an opportunity to revoke or amend the anatomical gift or revoke the

1 refusal.

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

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

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

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

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

25 * **Sec. 23.** AS 13.52 is amended by adding a new section to read:

26 **Sec. 13.52.233. Sale or purchase of parts prohibited; charges allowed.** (a)
27 Except as otherwise provided in (b) of this section, a person who, for valuable
28 consideration, knowingly purchases or sells a part for transplantation or therapy if
29 removal of a part from an individual is intended to occur after the individual's death
30 commits a class C felony.

31 (b) A person may charge a reasonable amount for the removal, processing,

1 preservation, quality control, storage, transportation, implantation, or disposal of a
2 part.

3 * **Sec. 24.** AS 13.52 is amended by adding new sections to read:

4 **Sec. 13.52.243. Immunity.** (a) Except as provided by AS 13.52.080 -
5 13.52.090, a person who acts under AS 13.52.173 - 13.52.268 or with the applicable
6 anatomical gift law of another state, or attempts in good faith to act under
7 AS 13.52.173 - 13.52.268 or with the applicable anatomical gift law of another state,
8 is not liable for the act in a civil action, a criminal prosecution, or an administrative
9 proceeding.

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

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

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

21 (1) AS 13.52.173 - 13.52.268;

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

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

26 (b) If a document of gift is valid under this section, the law of this state
27 governs the interpretation of the document of gift.

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

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

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

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

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

22 (b) If a coroner or a state medical examiner receives notice from a
23 procurement organization that an anatomical gift might be available or was made with
24 respect to a decedent whose body is under the jurisdiction of the coroner or state
25 medical examiner and a postmortem examination is going to be performed, unless the
26 coroner or state medical examiner denies recovery under AS 13.52.257, the coroner,
27 the state medical examiner, or a designee shall conduct a postmortem examination of
28 the body or the part in a manner and within a period compatible with its preservation
29 for the purposes of the gift.

30 (c) A part may not be removed from the body of a decedent under the
31 jurisdiction of a coroner or a state medical examiner for transplantation, therapy,

1 research, or education unless the part is the subject of an anatomical gift. The body of
2 a decedent under the jurisdiction of the coroner or state medical examiner may not be
3 delivered to a person for research or education unless the body is the subject of an
4 anatomical gift. This subsection does not preclude a coroner or the state medical
5 examiner from performing the medicolegal investigation on the body or parts of a
6 decedent under the jurisdiction of the coroner or state medical examiner.

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

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

24 (c) A person who has any information requested by a coroner or the state
25 medical examiner under (b) of this section shall provide that information as
26 expeditiously as possible to allow the coroner or state medical examiner to conduct the
27 medicolegal investigation within a period compatible with the preservation of parts for
28 the purpose of transplantation, therapy, research, or education.

29 (d) If an anatomical gift has been or might be made of a part of a decedent
30 whose body is under the jurisdiction of the coroner or state medical examiner and a
31 postmortem examination is not required, or the coroner or state medical examiner

1 determines that a postmortem examination is required but that the recovery of the part
2 that is the subject of an anatomical gift will not interfere with the examination, the
3 coroner or state medical examiner and the procurement organization shall cooperate in
4 the timely removal of the part from the decedent for the purpose of transplantation,
5 therapy, research, or education.

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

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

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

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

20 (3) provide a record with the specific reasons to the procurement
21 organization.

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

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

1 * **Sec. 26.** AS 13.52 is amended by adding a new section to read:

2 **Sec. 13.52.263. Relation to Electronic Signatures in Global and National**
 3 **Commerce Act.** AS 13.52.173 - 13.52.267 modify, limit, and supersede 15 U.S.C.
 4 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), except
 5 that AS 13.52.173 - 13.52.267 do not modify, limit or supersede 15 U.S.C. 7001, or
 6 authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

7 * **Sec. 27.** AS 13.52 is amended by adding new sections to read:

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

12 **Sec. 13.52.268. Definitions for AS 13.52.173 - 13.52.268.** Notwithstanding
 13 AS 13.52.390, in AS 13.52.173 - 13.52.268,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (16) "parent" means a parent whose parental rights have not been
23 terminated;

24 (17) "person" means an individual, corporation, business trust, estate,
25 trust, partnership, limited liability company, association, joint venture, public
26 corporation, government or governmental subdivision, agency, or instrumentality, or
27 any other legal or commercial entity;

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

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

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

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

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

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

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

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

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

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

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

25 (27) "state medical examiner" means the state medical examiner
26 appointed under AS 12.65.015(a);

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

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

1 research or education;

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

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

8 * **Sec. 28.** AS 13.52.390(3) is amended to read:

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

13 * **Sec. 29.** AS 13.52.390(30) is amended to read:

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

17 * **Sec. 30.** AS 18.65.311(b) is amended to read:

18 (b) An employee of the department who processes an identification card
19 application, other than an application received by mail, shall ask the applicant orally
20 whether the applicant wishes to execute an anatomical gift. The department shall, by
21 placement of posters and brochures in the office where the application is taken, and by
22 oral advice, if requested, make known to the applicant the method by which the
23 cardholder may make an anatomical gift under AS 13.52. The department shall inform
24 each applicant for an identification card in writing that, if the applicant executes a gift
25 under AS 13.52 and if the gift is made with the registration, the department will
26 transmit the information on the identification card to a donor registry created under
27 AS 13.50.110. The department shall also direct the applicant to notify a procurement
28 organization or the department under AS 13.50.140 if the identification card is
29 destroyed or mutilated or the gift is revoked under **AS 13.52.183** [AS 13.52.170]. The
30 department shall carry out the requirements of AS 13.50.100 - 13.50.190.

31 * **Sec. 31.** AS 28.10.021(c) is amended to read:

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

16 * **Sec. 32.** AS 28.15.061(d) is amended to read:

17 (d) An employee of the department who processes a driver's license
18 application, other than an application received by mail, shall ask the applicant orally
19 whether the applicant wishes to execute an anatomical gift. The department shall make
20 known to all applicants the procedure for executing an anatomical gift under AS 13.52
21 (Health Care Decisions Act) by displaying posters in the offices in which applications
22 are taken, by providing a brochure or other written information to each person who
23 applies in person or by mail, and, if requested, by providing oral advice. The
24 department shall inform each applicant in writing that, if the applicant executes a gift
25 under AS 13.52 and if the gift is made with the driver's license application, the
26 department will transmit the information on the license to a donor registry created
27 under AS 13.50.110. The department shall also direct the applicant to notify a
28 procurement organization or the department under AS 13.50.140 if the license is
29 destroyed or mutilated or the gift is revoked under **AS 13.52.183** [AS 13.52.170]. The
30 department shall carry out the requirements of AS 13.50.100 - 13.50.190.

31 * **Sec. 33.** AS 28.15.111(b) is amended to read:

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

11 * **Sec. 34.** AS 37.05.146(c) is amended by adding a new paragraph to read:

12 (82) donations to the anatomical gift awareness fund under
 13 AS 13.50.150.

14 * **Sec. 35.** AS 13.52.170, 13.52.180, 13.52.190, 13.52.200, 13.52.210, 13.52.220, 13.52.230,
 15 13.52.240, 13.52.250, 13.52.260, 13.52.265, 13.52.270, 13.52.280, 13.52.390(10),
 16 13.52.390(12), 13.52.390(13), and 13.52.390(41) are repealed.

17 * **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to
 18 read:

19 APPLICABILITY. (a) AS 13.16.680(a), as amended by sec. 1 of this Act, and
 20 AS 13.16.700, as amended by sec. 2 of this Act, apply to a decedent if the decedent dies on or
 21 after the effective date of this Act.

22 (b) AS 13.33.101(d), (e), (f), and (g), as added by sec. 3 of this Act, apply to
 23 provisions for a nonprobate transfer on death in a life insurance contract or a retirement plan
 24 that are made before, on, or after the effective date of this Act. In this subsection, "life
 25 insurance contract" and "retirement plan" have the meanings given in AS 13.33.101(g), added
 26 by sec. 3 of this Act.

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

29 CONTINUING EFFECT OF EXISTING ANATOMICAL GIFTS. An anatomical gift
 30 made under AS 13.52.170 - 13.52.280, repealed by this Act, continues in effect under
 31 AS 13.52.173 - 13.52.268, enacted by secs. 17 - 27 of this Act, until the anatomical gift is

1 revoked under AS 13.52.173 - 13.52.268.