

**HB**

**420**



Health, Education, and Social Services Committee  
Alaska State Legislature  
House of Representatives  
Representative Peggy Wilson - Chair

**SPONSOR STATEMENT**

**House Bill 420**

"An Act relating to the Uniform Anatomical Gift Act, to anatomical gifts, to donations to the anatomical gift awareness fund, to a registry of anatomical gifts, and to organizations that handle the procurement, distribution, or storage of all or a part of an individual's body."

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For nearly forty years, the Uniform Anatomical Gift Act (UAGA) has served as a template for harmonizing anatomical gift laws in all 50 states. This important piece of federal legislation aims to facilitate organ and tissue donation and transplantation, remove obstacles in the donation process, and increase participation in organ donor programs.

Using the 2008 Revised UAGA as a template, HB 420 clarifies Alaska statutes governing anatomical gifts and brings them in sync with technological and methodological changes in the donation and transplantation field over the years.

Alaskans have shown their deep commitment to the community by joining the Alaska Donor Registry (ADR) in record numbers since its inception in 2004. Over 330,000 Alaskans have joined the ADR, representing more than 68% of licensed drivers and close to 50% of the state's population. 800-1,000 new registrations are added each week. These impressive numbers certainly underscore Alaskans' support for organ and tissue donation and their willingness to participate in these much needed programs, but more can be done.

At last count, the organ transplant waiting list in the U.S. had grown to nearly 100,000 patients in length, eighteen of which die each day while waiting for a transplant. Right now in Alaska 180 patients in need of a life-saving transplant are waiting for a donated organ to become available and hundreds more are waiting for tissue transplants.

By mirroring language in the 2008 revision of the UAGA, HB 420 improves anatomical gift law in Alaska and, in doing so, encourages and facilitates badly needed organ donations that save and improve lives all over the state and throughout the country.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 17, 2008

**SUBJECT:** Sectional summary of HB 420 relating to the Uniform Anatomical Gift Act (Work Order No. 25-LS1568\A)

**TO:** Representative Peggy Wilson  
Attn: Becky Rooney

**FROM:**  Theresa Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Makes a conforming amendment to a section dealing with the donor registry program.

**Section 2.** Limits the purpose of donations to in-state promotions of anatomical donations.

**Section 3.** Limits the anatomical gift purpose of the fund to in-state promotions.

**Section 4.** Makes a conforming amendment to a definition for the donor registry program.

**Section 5.** Makes a conforming amendment to a definition for the donor registry program.

**Section 6.** Makes a conforming amendment to certain requirements for individual instructions.

**Section 7.** Makes an exception, based on a new anatomical gift section, to the language addressing when advance health care directives from other states are valid.

**Section 8.** Makes a conforming amendment to the section addressing the revocation of an advance health care directive.

**Section 9.** Makes a conforming amendment.

**Section 10.** Makes a conforming amendment.

**Section 11.** Makes a conforming amendment.

**Section 12.** Makes a conforming amendment to the provision addressing guardian compliance with individual instruction and revocation of health care directives.

**Section 13.** Makes a conforming amendment to the provision addressing the compliance of health care providers, health care institutions, and health care facilities with individual instructions and certain health care decisions.

**Section 14.**

Sec. 13.52.173 allows for the making of an anatomical gift of a donor's body or part before the donor's death. Permitted purposes are transplantation, therapy, research, and education. Describes who can make the gift.

Sec. 13.52.177 describes how and when a donor may make an anatomical gift before the donor's death. Includes by will, by indication on a driver's license or identification card, during a terminal illness, or by a donor card or another record. States that revocation, suspension, expiration, or cancellation of a driver's license or an identification card doesn't invalidate the gift on the license or card. States that invalidation of a will after the donor's death doesn't invalidate the gift.

**Section 15.**

Sec. 13.52.183 explains how certain anatomical gifts may be amended or revoked. Includes signing a record and executing a document of gift. Specifies certain witnessing requirements. Includes destruction and cancellation of the document of gift and communication in any form during a terminal condition to at least two adults.

Sec. 13.52.187 states that a person may refuse to make an anatomical gift. Indicates how this may be done. Allows a person who has made a refusal to amend or revoke the refusal and indicates how. States generally that a person's refusal to make a gift of the person's body or part bars other persons from making the gifts.

**Section 16.**

Sec. 13.52.193 generally bars other persons from making, amending, or revoking a gift of a donor's body or part if the donor made the gift or amended the donor's gift. States that a donor's revocation of a gift is not considered a refusal to make a gift and doesn't bar certain other persons from making the gift. Bars certain persons from making, amending, or revoking a gift if a person other than the donor has made or amended the gift. States that revocation of a gift by a person who is not the donor does not bar another person from making the gift. States generally that a gift of one part is not a refusal to give or a

Representative Peggy Wilson

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future limitation on the giving of another part. States generally that making a gift for one purpose does not prevent the making of a gift for another purpose. Allows the parent of a deceased unemancipated minor to revoke or amend a gift or to revoke a refusal.

Sec. 13.52.197 allows for the making of a gift of a decedent's body or part. Permitted purposes are transplantation, therapy, research, and education. Provides a prioritized list of the classes of persons who may make the gift. Addresses some problems of dealing with the classes.

#### **Section 17.**

Sec. 13.52.203 describes how a person may make an anatomical gift after another person dies. Includes a document of gift and oral communication. States that a gift may be amended or revoked by one or more members of a prior class (as listed under AS 13.52.197). Indicates by what stage in the removal of a part the revocation must be made.

Sec. 13.52.207 states to whom a gift may be made. Indicates to whom the part passes if the gift can't be transplanted into the named recipient. Provides guidance on the situation where the purpose of the gift is stated but the recipient is not. Establishes some priorities where there is more than one purpose stated for the gift and they are not prioritized. Indicates the use of a gift where the gift does not name an allowed recipient or a purpose. Indicates to whom a gift passes when a gift cannot be transplanted, when there is no recipient or purpose named, or when other conditions are met. Prohibits a person from accepting a gift knowing the gift was not effectively made or the decedent made an unrevoked refusal.

#### **Section 18.**

Sec. 13.52.213 requires the listed persons to search a deceased individual or an individual near death for a document of gift or other information indicating a gift or a refusal to make a gift. Requires the person finding a document of gift or a refusal to send it to the hospital, if any, to which the deceased or dying person is taken. Except as provided by two other sections, removes criminal and civil liability for failing to comply with this section. But does allow administrative sanctions.

Sec. 13.52.217 states that a document of gift does not have to be delivered during the donor's lifetime to be effective. After death, requires a person holding a document of gift or refusal to allow the document to be examined and copied by certain persons, including a person to whom the gift could pass.

#### **Section 19.**

Sec. 13.52.223 requires a procurement organization to make a reasonable search of department records and a donor registry for an individual whom a hospital refers to the

organization as being at or near death. Requires the department to allow a procurement organization reasonable access to the department's records to determine if a person at or near death is a donor. Allows the organization to conduct a reasonable examination to determine medical suitability of a part. Generally allows a prospective gift recipient to conduct a reasonable examination to ensure medical suitability of the part. Generally allows for examination of all the donor's medical and dental records.

Requires at an unemancipated minor's death, if the minor was a donor or had signed a refusal, an organization to search for the parents and provide them with the opportunity to revoke or amend the gift or revoke the refusal. Directs an organization to search for certain persons having priority to make donations for a prospective donor. Gives a recipient superior rights regarding the part. Allows the person to accept or reject the gift in whole or in part. Generally allows the person to allow embalming, burial, or cremation but prohibits unnecessary mutilation when removing a part. Prohibits the physician attending at death and determining the time of death from participating in the removal or transplant of a part.

Sec. 13.52.227 requires a hospital to enter into agreements with procurement organizations to coordinate the procurement and use of anatomical gifts.

#### **Section 20.**

Sec. 13.52.233 establishes a criminal penalty for knowingly selling or purchasing an anatomical part to be removed after death. Allows a person to charge a reasonable amount for services related to the handling of anatomical parts.

#### **Section 21.**

Sec. 13.52.243 removes, with exceptions, civil, criminal, and administrative liability for a person who complies, or attempts in good faith to act, under these gift provisions (or those of another state). Subject to two other statutes, precludes a person making a gift and the donor's estate from being liable for making or using a gift. Allows persons to rely on representations made by certain other persons unless known to be false.

Sec. 13.52.247 states which state's laws a document of gift may be executed under in order to be valid. Applies the law of this state to the interpretation of gift documents determined to be valid. Allows a person to presume that a document of gift is valid unless known to be invalidly executed or to be revoked.

#### **Section 22.**

Sec. 13.52.253 describes how to resolve a conflict between an anatomical gift and an advance health care directive with regard to the administration of measures necessary to ensure medical suitability of a part.

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Sec. 13.52.255 requires a coroner and a state medical examiner to cooperate with procurement organizations to maximize the recovery of anatomical gifts. Requires postmortem examinations to be done in a manner and time to preserve gifts. Aside from the medicolegal investigation, prohibits the removal of a part, or delivery of the body to another person, if the body is under the jurisdiction of a coroner or state medical examiner, unless the part or body is the subject of an anatomical gift.

Sec. 13.52.257 allows a coroner or the state medical examiner to release information to a procurement organization. Limits a procurement organization's subsequent disclosures of information. Allows the coroner or state medical examiner to review all relevant records held by any person. Requires a person with relevant information to provide the information to the coroner or state medical examiner on request and as expeditiously as possible.

If, for a body under the jurisdiction of the coroner or state medical examiner, a postmortem examination is not required, or if the examination is required but the part recovery won't interfere with an investigation, requires the coroner or state medical examiner and the procurement organization to cooperate in the timely removal of the part. If the part recovery may interfere with a postmortem investigation, allows the coroner or state medical examiner to consult with the procurement organization or its physician or technician and then to allow recovery.

If recovery is denied, requires a record explaining the reasons. If recovery is allowed, requires the procurement organization to provide, on request, information on the part to the coroner or state medical examiner. Requires a procurement organization to pay the extra costs of complying with this section if a coroner or state medical examiner elects to be present at a removal procedure.

**Section 23.** States how these gift sections relate to the federal Electronic Signatures in Global and National Commerce Act.

**Section 24.**

Sec. 13.52.267 requires that interstate uniformity be considered when construing the gift sections.

Sec. 13.52.268 defines terms for the anatomical gift sections.

**Section 25.** Amends the definition of "anatomical gift" for general application in AS 13.52.

**Section 26.** Amends the definition of "part" for general application in AS 13.52.

**Section 27.** Makes a conforming amendment in a section related to the state identification card section.

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**Section 28.** Makes a conforming amendment in a section related to vehicle registration.

**Section 29.** Makes a conforming amendment in a section relating to driver's license applications.

**Section 30.** Makes a conforming amendment in a section relating to the issuance of drivers' licenses.

**Section 31.** Adds donations (to the anatomical gift awareness fund) to a list of program receipts that are accounted for separately.

**Section 32.** Repeals the current sections and definitions in AS 13.52 that relate to anatomical gifts.

**Section 33.** Provides that anatomical gifts made under repealed sections continue to be effective until the anatomical gifts are revoked.

If I may be of further assistance, please advise.

TLB:med

08-193.med

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSSB 181(HES)  
 (S) Publish Date: 2/15/08  
 Dept. Affected: Health & Social Services  
 RDU: Public Health  
 Component: State Medical Examiner

ID (File name) SB181CS(HES)-DHSS-SME-02-11-08  
 Title ANATOMICAL GIFTS

Sponsor MCGUIRE  
 Requester SENATE HES

Component No. 293

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	Appropriation		Information						
	Required		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Personal Services									
Travel									
Contractual									
Supplies									
Equipment									
Land & Structures									
Grants & Claims									
Miscellaneous									
<b>TOTAL OPERATING</b>			<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>									
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<b>CHANGE IN REVENUES (0)</b>									
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts									
1003 GF Match									
1004 GF									
1037 GF/Mental Health									
Other (Specify Type-do not abbreviate)									
Other (Specify Type-do not abbreviate)									
<b>TOTAL</b>			<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

Full-time									
Part-time									
Temporary									

**ANALYSIS:** (Attach a separate page if necessary)

The purpose of CSSB181 (HES) is to increase organ donations by re-defining the authority and roles of the State Medical Examiner (SME), organ procurement organizations, hospitals, EMS responders and others involved in organ donations. It stems from a recent national rewrite of the Uniform Anatomical Gift Act. The bill also affects end-of-life decisions, generally in favor of organ donation. The bill also broadens the pool of organ donors by lowering the age of decision from 18 to 16 and expanding the list of people authorized to make an anatomical gift.

The sections of CSSB181 (HES) that most directly impact DHSS involve the role of the SME in working with organ procurement organizations. Pages 16-18 of the bill clarify those roles. There is no fiscal impact to the SME Office.

Prepared by: Beverly K. Wooley  
 Division: Director of Public Health  
 Approved by: Karleen Jackson, Commissioner  
 Agency: Department of Health and Social Services

Phone: 465-3090  
 Date/Time: 02/11/2008  
 Date: 02/11/2008

# LEGAL SERVICES

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## MEMORANDUM

March 6, 2008

**SUBJECT:** Bill relating to anatomical gifts (Work Order No. 25-LS1568\A)

**TO:** Representative Peggy Wilson  
Chair of the House Health, Education & Social Services Committee  
Attn: Becky Rooney

**FROM:** Theresa Bannister  
Legislative Counsel

This memo accompanies the bill described above.

Privacy and liberty issues. Please be aware that new sec. 13.52.253 is subject to the current AS 13.52.055. Because of this, sec. 13.52.253 pulls in and raises the constitutional issues inherent in AS 13.52.055. In particular, AS 13.52.045(b) prohibits implementing advance health care directives in certain cases of pregnancy, which may result in not giving effect to the advance health care directive that is the subject of the conflict under sec. 13.52.253. This, in turn, to the extent that the provision applies to a woman in her first trimester of pregnancy and, possibly, in her second trimester, may violate a woman's liberty interest, under the 14th amendment to the U.S. Constitution, to refuse medical treatment, and a woman's right to privacy based on her fundamental right to make decisions about her body and reproduction under Alaska law.

If I may be of further assistance, please advise.

TLB:ljw  
08-140:ljw

Enclosure

## Trevor Fulton

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**From:** Bruce Zalneraitis [BruceZ@lifealaska.org]  
**Sent:** Monday, March 10, 2008 11:15 AM  
**To:** Trevor Fulton  
**Subject:** Terry Bannister comment

I received a note back from Deb Behr that Terry's comment relates to the existing statute and not SB181 and recommended not making any changes to current version of the bill. When you get a House version of the bill could you please send me a copy. Thanks.

BZ

Bruce Zalneraitis  
CEO  
Life Alaska Donor Services  
235 East 8th Avenue, Suite 100  
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--Life Alaska Donor Services, Inc. - [www.lifealaska.org](http://www.lifealaska.org)  
**Celebrating 16 years of service to Alaskans (1992 - 2008)**

--Administrators of the Alaska Donor Registry - [www.alaskadonorregistry.org](http://www.alaskadonorregistry.org)  
**There are now over 329,000 Donors registered and counting!**



### **Donate Life Northwest**

LifeCenter Northwest  
Living Legacy Foundation  
SightLife  
Northwest Lions Foundation for Sight & Hearing  
Northwest Tissue Center

### **ENDORSEMENTS**

*"I hope the UAGA will pass in Washington, giving all of us—donor families, waiting list candidates, recipients, and most of all, donors—assurance that our end of life decisions are honored." -- Elaine Morse, widow of donor, Bellevue, WA*

### **National Medical and Health Care Organizations**

American Academy of Ophthalmology  
American Association of Tissue Banks  
American Medical Association  
American Society of Cataract & Refractive Surgery  
Association of Organ Procurement Organizations  
The Cornea Society  
Eye Bank Association of America  
National Kidney Foundation  
United Network for Organ Sharing

### **Regional Medical and Health Care Organizations**

Children's Hospital and Regional Medical Center  
Community Tissue Services  
LifeCenter Northwest  
Living Legacy Foundation  
Northwest Lions Foundation for Sight & Hearing  
Northwest Tissue Center  
Oregon Health & Science University  
Pacific Northwest Transplant Bank  
Providence Health and Services Washington Region  
Sacred Heart Medical Center  
SightLife  
Swedish Medical Center  
University of Washington Medical Center  
Virginia Mason Medical Center

### **Organized Labor**

International Association of Machinists and Aerospace Workers, District Lodge 751  
Washington State Council of County and City Employees

### **Groups and Individuals**

Korean Women's Association  
Ron Chow, Governor's Commission on Asian Pacific American Affairs Commissioner

*"When it comes to the UAGA, the goal is to follow the wishes of the patient in a timely and uniform manner. It does not hinder anyone's end of life decision - in fact, the aim is to ensure end of life decisions ARE honored by preventing family members from overriding a deceased person's wish to donate." -- Randy Small, heart transplant recipient, Bothell, WA*



## UAGA Backgrounder

### Original UAGA

- The Uniform Anatomical Gift Act was enacted in August of 1968, in order to establish comprehensive and uniform laws regarding organ and tissue donation, and to ensure compliance with the donor's wishes.
- All 50 states and the District of Columbia adopted this act, some in slightly modified form.
- A subsequent revision was recommended and enacted in 1987 by many states, strengthening the ability of each individual to make their own decision about donation.
- Key Provisions:
  - Any individual of sound mind over the age of 18 may make an anatomical gift.
  - Neither age nor medical history should discourage a person's decision to donate.
  - If a person has not made their own donation decision, that responsibility will fall to their next of kin. Consent for the gift will be sought from the following people, in this order: spouse, adult child, parent, adult sibling, legal guardian. If any listed individual refuses consent, no further requests will be made and donation will not occur.
  - The individual may choose to make limitations on anatomical gifts, including which organs and tissues may be donated.

### Revised UAGA 2008 (HB1637 - SB 5657)

- The act was written by the National Conference of Commissioners on Uniform State Laws (NCCUSL), which develops and drafts acts on all subjects for State Legislatures to consider. The types of model statutes created are those where consistency across state lines is desirable.
- **The intent of the 2008 revision is to update and modernize the UAGA in every state, to ensure consistency in policy and practice across the nation.** Uniformity is vital because life-saving transplants can cross state borders. We must ensure people across the US receive the same high level of service, benefit from the same resources, and are protected by the same laws.
- Washington's UAGA will be updated in a number of vital ways:
  - It harmonizes Washington's UAGA with federal law, current technology and Advance Medical Directives.
  - It clarifies the rules for donation decision-making when a registry record is not in place, further defining who can make or refuse a gift on the behalf of the potential donor.
  - It strengthens an adult's right to refuse a gift if they so desire, as well as the right of a parent or guardian to refuse a gift on behalf of a minor.
  - It clarifies the roles and responsibilities of donation agencies, indicating who is responsible for tracking and managing potential donors and who can receive and process an anatomical gift.
  - It provides new guidelines for cooperation and coordination between organ donation agencies and medical examiners and coroners, particularly in cases where a potential donor's death circumstances placed them under the jurisdiction of the Medical Examiner or coroner.
  - It more clearly prioritizes donation for transplantation over donation for research.
  - Though some states will enact registry provisions, in order to collect a database of donation decisions. Washington already has a registry in place that meets or exceeds all standards being requested. The Living Legacy Registry will remain unchanged.
  - This revision of the UAGA is strongly supported by local and national organ and tissue donation agencies and governing bodies as well as multiple medical associations, societies, and foundations.



LIFECENTER  
NORTHWEST

*Saving Lives through Organ Donation*



LIVING  
LEGACY  
FOUNDATION

*Saving Lives through Organ & Tissue Donation*

**Revised Uniform Anatomical Gift Act (UAGA) 2008  
House Bill 1637 - Senate Bill 5657  
Information Sheet**

\*\*\*

**Each day, 18 people in the U.S. die waiting for a life-saving organ transplant.**

**Nearly 100,000 people are currently on the national organ transplant waiting list.**

\*\*\*

Updating the laws that govern anatomical gifts is imperative in order to serve the **1,500+ patients currently waiting for an organ transplant in this state**. Last year, **about 100 of those people died** while waiting for a life-saving transplant that never came.

This act was written by the National Conference of Commissioners on Uniform State Laws (NCCUSL), which develops and drafts acts for State Legislatures to consider when nationwide consistency is desirable.

**The intent of the 2008 revision is to update and modernize the UAGA in every state, and to ensure consistency in policy and practice across the nation.** Uniformity is important because we must ensure people across the US receive the same high level of service, benefit from the same resources, and are protected by the same laws.

Washington's UAGA will be updated in a number of vital ways:

- It harmonizes Washington's UAGA with federal law, current technology and Advance Medical Directives.
- It clarifies the rules for donation decision-making when a registry record is not in place, further defining who can make or refuse a gift on the behalf of the potential donor.
- It strengthens an adult's right to refuse a gift if they so desire, as well as the right of a parent or guardian to refuse a gift on behalf of a minor.
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- It more clearly prioritizes donation for transplantation over donation for research.
- This revision of the UAGA is strongly supported by local and national organ and tissue donation agencies and governing bodies as well as multiple medical associations, societies, and foundations.

**Please support this important legislation...lives depend on it.**

# The 2006 Revised Uniform Anatomical Gift Act—A Law to Save Lives

*Sheldon E. Kurtz, JD, University of Iowa College of Law and  
Christina Woodward Strong, JD, Law Offices of Christina Strong, Belle Mead, NJ  
David Gerasimow, Student Research Assistant*

*At its July 2006 Annual Meeting, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved a Revised Uniform Anatomical Gift Act, a revision that was three years in the making, and involved the active participation of numerous stakeholders, lawyers, judges, physicians, and others. Given the life-saving goals of this effort, NCCUSL hopes to see this act adopted by all state legislatures within the next two years. As Howard J. Swibel, President of NCCUSL, stated: "Rarely do we as virtual legislators have the opportunity to literally save people's lives. This is such an opportunity, and we must seize it in earnest, since thousands are waiting for life-saving organ transplants."*

## THE ORGAN DONATION CRISIS

As of November 2006, over 94,000 Americans were awaiting life-saving organ transplants.<sup>1</sup> Approximately nineteen of these patients die every day while still waiting.<sup>2</sup> No longer merely a tragedy, the growing divide between the number of people awaiting transplants and the number of available organs has become a national health crisis.<sup>3</sup>

The vast majority of organs available for transplant in the United States come from deceased donors ("anatomical donors" or "UAGA donors").<sup>4</sup> Each deceased donor may

give as many as seven solid organs for transplantation,<sup>5</sup> in addition to eyes and numerous tissues (including bone) for treatment of burns, cancers, blindness, spinal injuries, among many other conditions. There is, for each potential donor lost—whether due to legal ambiguity, system error, inefficiency, family dynamics, or simple delay—it is highly likely that a number of lives will be lost and that at least fifty people will lose the opportunity to benefit from tissue and eye donation. Research indicates that nearly nine in ten Americans support organ donation generally,<sup>6</sup> yet more than 40% of potentially transplantable organs are buried or cremated,<sup>7</sup> by conservative estimates.<sup>8</sup> It is apparent that much of the failure to save lives on this transplant list can be attributed to factors other than the generosity of the American people, which appears to be going strong.<sup>9</sup>

## THE SHORTCOMINGS OF THE UNIFORM ANATOMICAL GIFT ACTS OF 1968 AND 1987

It was against this bleak backdrop that the Association of Organ Procurement Organizations (AOPO) reviewed the anatomical gift laws of fifty-four different jurisdictions,<sup>10</sup> all of which have in place either the original 1968 UAGA or its 1987 revision, often with additional jurisdic-

tion-specific modifications. AOPO is a nonprofit organization that represents all federally designated organ procurement organizations (OPOs).<sup>11</sup> After it had identified numerous problems, discussed below, AOPO approached NCCUSL, the group that had promulgated both versions of the UAGA, to see if it would be willing to work on yet another revision.<sup>12</sup>

NCCUSL has worked for the uniformity of state laws since 1892.<sup>13</sup> It is a nonprofit, unincorporated association comprised of commissions, one from each of the fifty states and also from the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment for its commission, as well as the number of individuals appointed. These individuals, called commissioners, come together as the National Conference to study and review the law of the states and to determine those areas that should be uniform. After identifying such areas, the commissioners propose and draft statutes specifically addressing them.

AOPO found the following problems among the current anatomical gift laws

- The anatomical gift laws are hardly uniform, even though every jurisdiction had adopted the original

UAGA within two years of its 1968 promulgation by NCCUSL. The 1987 revision was adopted only sporadically, and often only in part.<sup>11</sup> Moreover, many states, such as Texas, New Jersey, California, Iowa, Wisconsin, Michigan, and New York, enacted unique versions, touching upon such diverse issues as donor-card signatures, death-record reviews, medical-examiner cooperation, tax incentives, and drivers' license donor registries. Non-uniformity is exacerbated by the fact that many states' anatomical gift acts fail to resolve choice-of-law and conflicts issues, such as how to deal with a document of gift drafted in a state other than the one in which the donor dies.

- Since the late 1980s, federally designated OPOs have administered the process of assessing and obtaining authorization for anatomical gifts.<sup>12</sup> Under federal law, OPOs also are responsible for assuring that anatomical gifts are properly managed, recovered, and allocated according to the national waiting list maintained by the federally-mandated Organ Procurement and Transplantation Network (OPTN). The nonprofit United Network for Organ Sharing (UNOS) currently runs the OPTN under contract with the federal government. The 1968 and 1987 versions of the UAGA fail to address the roles of these entities. In fact, some provisions of existing anatomical gift acts flatly contradict federal law, regulation, or policy. For example, since 1998, the Medicare Conditions of Participation (COPs)<sup>13</sup> have required Medicare-participating hospitals to maintain affiliation agreements with OPOs. Furthermore, the COPs permit only specially trained personnel to approach families with requests for donation. Yet the anatomical gift acts in many states imply that hospitals bear the sole responsibility for interacting with donor families, and many still require hospitals to seek organ donation preferences upon

admission. Some states ameliorated conflicts such as these by drafting amendments reflecting the federal regulatory scheme, either to their anatomical gift act or to their hospital-licensing regulations. In more than a few cases, such amendments were "tacked on" to existing acts, creating internal statutory conflict.<sup>17</sup>

- Increasingly, motor-vehicle licenses and Internet-based donor registries are being used as means to permanently and accessibly record documents of gift. Yet there is no standard definition of a donor registry, and no core requirements for their establishment or function.
- Healthcare agents or proxy holders under a durable healthcare power of attorney are not entitled to authorize post-mortem organ donation under the 1968 and 1987 UAGAs. Multiple decision makers therefore are potentially involved in end-of-life decisions about treatment, ventilation withdrawal, and post-mortem donation. Moreover, individuals who want a partner or other individual to make post-mortem donation decisions on their behalf cannot effectuate this wish under prior UAGAs.
- The 1987 UAGA explicitly provides that no other person may revoke a document of gift and that the assent of no other person is required for a gift to be valid.<sup>18</sup> This arguably had been the implicit intent of the 1968 UAGA. Yet some OPOs and hospitals fail to follow the existing law, causing AOPO and others to seek stronger and clearer language to further reinforce the legal finality of a document of gift.
- Most importantly, AOPO sought changes to provisions that frequently and unfairly thwart a family's wish to donate. Specifically, under both the 1968 and 1987 UAGAs, a single member of a class may veto an anatomical gift, irrespective of the number of other members in the same class that favor the making of

a gift.<sup>19</sup> Thus, if a decedent has no surviving spouse but has ten children, the "No" vote of one child trumps the "Yes" votes of the remaining nine. The prior UAGAs sanction a failure of majority rule that likely contravenes the decedent's wishes and that, more striking, also leads almost invariably to waiting-list deaths. This imbalance serves neither autonomy, nor altruism, nor the public good.

In light of these problems, NCCUSL decided to go forward with another revision that builds upon the concepts found in earlier versions, but that also includes a number of significant changes addressing the problems noted above. In addition to other improvements, the 2006 Revised Uniform Anatomical Gift Act warrants the careful and serious consideration of every jurisdiction for complete and uniform enactment.

### THE 2006 REVISED UNIFORM ANATOMICAL GIFT ACT

The Revised Uniform Anatomical Gift Act of 2006 (2006 UAGA) relates only to the recovery of parts (organs, eyes, and tissues) from deceased donors, although anatomical gifts from living donors are becoming increasingly common.<sup>20</sup> Furthermore, the 2006 UAGA continues to adhere to the so-called "opt-in" system under which no individual is a donor absent an affirmative gift of his or her parts.

Like prior versions, the centerpiece of the 2006 UAGA is the concept of "first-person" consent, under which no other person can alter the individual's decision to donate his or her parts after death. The 1987 UAGA purported to adopt that concept through language making an individual's gift "irrevocable," but, in practice, some procurement organizations reportedly ignored the wishes of a donor if surviving family members objected. While the 2006 UAGA does not use the language of irrevocability, it nonetheless accomplishes that goal

by its strengthened language expressly barring a person from "making, amending, or revoking" an anatomical gift of the donor's parts if the donor made a gift of them.<sup>21</sup> It would be unlawful for a procurement organization to act upon an attempted revocation by surviving family members.

The 2006 UAGA facilitates donation by expanding the list of individuals who may make an anatomical gift on a donor's behalf both during the donor's life and thereafter. For example, it explicitly authorizes a parent of a minor, a guardian of an individual, and, most importantly, an agent acting under a healthcare power of attorney to make an anatomical gift during the life of the child, ward, or principal.<sup>22</sup> Such a gift then bars others from revoking the gift after the child, ward, or principal dies.<sup>23</sup> The 2006 UAGA also authorizes a minor who is eligible to obtain a driver's license or permit to make a gift without parental consent,<sup>24</sup> although a parent of the minor can revoke the gift if the minor dies under the age of 18.<sup>25</sup> The minor can make that gift on any type of document of gift, not only on a driver's license or permit.<sup>26</sup>

The 2006 UAGA also expressly provides for the making of an anatomical gift on a donor registry, in addition to donor cards and driver's licenses.<sup>27</sup> In time, donor registries may become the primary device used to make anatomical gifts. The 2006 UAGA allows the appropriate state agency to establish, or contract for the establishment of, a donor registry.<sup>28</sup> It also sets forth three criteria for a well-designed donor registry: (1) that it allow a donor or other authorized persons to make a gift on the registry by way of statement or symbol, (2) that it be accessible to all procurement organizations to determine whether an individual at or near death has made, amended, or revoked an anatomical gift, and (3)

that it be accessible to donors, authorized persons acting on their behalf, and procurement organizations on a 24/7 basis.<sup>29</sup> Private organizations may create donor registries without a contract from the state, but they must still satisfy the same three criteria.<sup>30</sup>

If a decedent dies without having made an anatomical gift during life, the 2006 UAGA provides that a gift can be made on the decedent's behalf by his or her spouse, adult children, parents, adult siblings, and grandparents.<sup>31</sup> The previous versions of the UAGA also empowered these classes,<sup>32</sup> but the 2006 UAGA expands upon the list by adding the decedent's adult grandchildren,<sup>33</sup> as well as any adult who exhibited special care and concern for the decedent.<sup>34</sup> It also adds the individual who had been acting as the decedent's agent under a healthcare power of attorney at the time of the decedent's death.<sup>35</sup> The 2006 UAGA accords first priority to such an agent.<sup>36</sup> If none of these persons is reasonably available to make an anatomical gift, the gift can be made by the person having the authority to dispose of the decedent's body.<sup>37</sup> This individual could be a coroner or medical examiner, hospital administrator, or government official.

The 2006 UAGA also changes prior law regarding anatomical gifts from classes consisting of multiple members, such as children. Under the 2006 UAGA, any member of a class may make a gift if he or she is unaware of any objections by other members of the class.<sup>38</sup> If an objection is known, then the gift can only be made by a majority of the class members who are reasonably available.<sup>39</sup> If, for example, a decedent has three children, any one of them can make a gift on the decedent's behalf, unless that child knows that one of his or her siblings objects. If such an objection is known, then the

gift can be made only by the majority of those children who are reasonably available. Thus, if all three children are reasonably available and an objection is known, two of them must agree to donate before a gift is made. If only two of them are reasonably available and an objection is known, they must agree, and the gift is made despite the objections of the third child, who is not reasonably available. Class members who are not reasonably available do not get to participate in the decision whether to make an anatomical gift.<sup>40</sup> This was a purposeful choice because a known objection by a person who is not reasonably available may be based upon faulty information about the effects of a gift or other concerns that could have been anchored had that person been reasonably available to discuss the matter with the relevant procurement organization.

Anatomical gifts can be made for the purposes of transplantation, therapy, research, or education. Prior law, unlike the 2006 UAGA, made no attempt to prioritize these purposes, either when the donor authorized all four, when the donor authorized some, or when the donor failed to specify any. Also, under the prior UAGAs, it was unclear which purposes a donor intended when he or she manifested his or her intent merely by checking a box marked "organ donor" or by placing a symbol or statement on his or her driver's license. Anecdotal evidence suggests that these donors contemplated only transplantation and therapy, not research or education. Lastly, prior law did not specifically identify the persons to which gifts pass. The 2006 UAGA resolves these issues by setting forth a number of default rules to guide the interpretation of ambiguous documents of gift. (See Table)<sup>41</sup>

The 2006 UAGA creates a number of rights and duties for procurement organizations,<sup>42</sup> many of which were

Table. Rules Governing the Interpretation of Ambiguous Documents of Gift

<i>Gift of</i>	<i>Purpose</i>	<i>Named donee or custodian</i>	<i>Gift passes to</i>
Whole body specified or specified part	Research or education	Named hospital, accredited medical school, dental school, college or university	Hospital, accredited medical school, dental school, college or university as named.
Specified part	Transplantation	Named individual who is also the recipient of the gift	Named individual, unless the part specified cannot be transplanted into the named individual, in which case, the specified part passes to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank.
Specified part	One or more specified purposes, prioritized	None named	Follow the specified priority, changing the purpose if higher purposes are not possible.  If the gift is for the purpose of transplantation or therapy, the part passes to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank.  If the gift is for the purpose of research or education, to the appropriate eye bank, tissue bank or organ procurement organization.
Specified part	One or more specified purposes, not prioritized	None named	If multiple purposes, the following priority applies: transplantation or therapy, and then research or education.
Specified part	None specified	None named	The part may be used only for transplantation or therapy, and the part passes to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank. Then follow the rules for passage of the gift where the purposes are prioritized.
No parts specified	One or more specified purposes, prioritized	None named	Follow the specified priority, changing the purpose if higher purposes are not possible.  If the gift is for the purpose of transplantation or therapy the parts pass to the appropriate (OPO) as custodian, or to the appropriate eye bank or tissue bank.  If the gift is for the purpose of research or education, the parts pass to the appropriate eye bank, tissue bank or organ procurement organization.

Table: Rules Governing the Interpretation of Ambiguous Documents of Gift

<i>Gift of</i>	<i>Purpose</i>	<i>Named donee or custodian</i>	<i>Gift passes to</i>
No parts specified	One or more specified purposes, not prioritized	None named	If multiple purposes, the following priority applies: transplantation or therapy, and then research or education. Then follow the rules for passage of the parts where the purposes are prioritized.
No parts specified*	None specified	None named	The whole body may not be donated. The part may be used only for transplantation or therapy, and the part passes to the appropriate OPO as custodian, or to the appropriate eye bank or tissue bank.

\*A mere "general intent" to be either a "donor" or "organ donor," either expressly or by symbol.

incorporated in prior versions.<sup>13</sup> But, some additional ones have been added. For example, if a hospitalized patient is referred to a procurement organization to determine whether that patient is a prospective donor, measures necessary to ensure the medical suitability of the patient's parts may not be withdrawn, unless it is known that the patient had expressed a contrary intent.<sup>14</sup> The 2006 UAGA imposes upon procurement organizations the affirmative obligation to conduct a reasonable search for the parents of a minor donor to provide them with an opportunity to revoke the minor's anatomical gift.<sup>15</sup> Similarly, if a prospective donor has not made an anatomical gift, the procurement organization must conduct a reasonable search for any person having priority to make an anatomical gift upon the prospective donor's death.<sup>16</sup>

The 2006 UAGA provides that a document of gift is valid if executed in accordance with the laws of the state in which the gift is made or the laws

of the state where the person making the gift is domiciled, has a place of residence, or is a national.<sup>17</sup> Procurement organizations and other persons can presume individuals who sign a document of gift are who they say they are, unless it has actual knowledge that they are not.<sup>18</sup>

Even if a prospective donor has a declaration or advance healthcare directive instructing the withdrawal or withholding of life support systems, measures necessary to ensure the medical suitability of organs for transplantation or therapy will not be withdrawn or withheld, unless the declaration or advance healthcare directive expressly so provides.<sup>19</sup> Thus, the 2006 UAGA adjusts the potential tension between the desires of individuals to donate organs, and the desires of individuals not to have their lives unduly prolonged.

Lastly, the 2006 UAGA includes two comprehensive sections relating to the interactions between procurement organizations on the one hand,

and coroners and medical examiners on the other.<sup>20</sup> It eliminates provisions found in the previous versions that allow coroners and medical examiners to donate parts under certain circumstances. These provisions have run into legal difficulties in the courts.<sup>21</sup> Under the 2006 UAGA, coroners and medical examiners cannot make an anatomical gift on the behalf of an individual under their jurisdiction unless the individual, or other authorized persons, such as agents, family members, guardians, and close friends, have made such a gift. However, if the individual did not make a gift, and if other authorized persons did not make a gift because they were not reasonably available, then the coroner or medical examiner has the authority to make the gift. The 2006 UAGA, through a number of rules, also directs procurement organizations and coroners and medical examiner to cooperate in maximizing donation opportunities.

In sum, the 2006 UAGA incorporates a number of important new features

that will increase organ, tissue, and eye donation. It addresses and resolves the shortcomings of its previous versions, while taking into account medical and legal advances that have occurred since the last revision. As the organ donation crisis continues to grow, the 2006 UAGA will play a significant role in any solution, but only if adopted by most, if not all, state legislatures.

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*The authors are grateful for the scholarly assistance of David Carasemow, a second year law student at the University of Iowa Law School.*

## END NOTES

<sup>1</sup> United Network for Organ Sharing (UNOS), [www.unos.org](http://www.unos.org) (last visited Nov. 21, 2006).

<sup>2</sup> U.S. Dept. of Health and Human Servs., Health Resources and Servs. Admin., Healthcare Sys. Bureau, Div. of Transplantation (HHS/HRSA/HSB/DOH), [www.organdonor.gov](http://www.organdonor.gov) (last visited Nov. 21, 2006).

<sup>3</sup> The difference between the number of individuals on the national waiting list at year end and the number of individuals who annually received organs increased from 22,185 individuals in 1995 to 59,367 in 2004. HHS, HRSA, HSB, DOH, 2005 ANNUAL REPORT OF THE U.S. ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK AND THE SCIENTIFIC REGISTRY OF TRANSPLANT RECIPIENTS: TRANSPLANT DATA 1995-2004 (tbls. 1-4 & 1-10) (2005) (available at [www.optn.org/data/annualReport.asp](http://www.optn.org/data/annualReport.asp) [hereinafter "2005 OPEN-SRTR ANNUAL REPORT 1995-2004"]).

<sup>4</sup> In 2004, about three out of every four transplanted organs came from a deceased donor. *Id.* at tbl. 1-7.

<sup>5</sup> These organs are the heart, lungs, liver, pancreas, and kidneys, and small intestine.

<sup>6</sup> GALLUP ORG., *THE AMERICAN PEOPLE'S VIEWS ON ORGAN DONATION AND TRANSPLANTATION SURVEY* (1993) (available at [www.transweb.org/reference/articles/gallup\\_survey/gallup\\_index.html](http://www.transweb.org/reference/articles/gallup_survey/gallup_index.html)).

<sup>7</sup> 2005 OPEN-SRTR ANNUAL REPORT 1995-2004, *supra* note 3, at tbl. H-2 (showing that, in the first four months of 2005, 57.2% of potential donors actually became donors).

<sup>8</sup> While UNOS states that about 40% of organs go unused, some scholars estimate that number to be closer to

60%. *See* NAT'L ACADEMIES, INST. OF MED., BUREAU OF HEALTH SERVICES POLICY, COMM. ON INCREASING RATES OF ORGAN DONATION, ORGAN DONATION OPPORTUNITIES FOR ACTION 127 (2006), available at [www.nap.edu](http://www.nap.edu) (search for "Organ Donation: Opportunities for Action").

<sup>9</sup> *See* GALLUP ORG., *supra* note 6. The same survey showed that 37% and 32% of respondents were "very likely" or "somewhat likely," respectively, to donate their own organs. *Id.*

<sup>10</sup> AOPPO surveyed the following jurisdictions: all fifty states, the District of Columbia, Guam, and the U.S. Virgin Islands.

<sup>11</sup> *See* [www.aoppo.org](http://www.aoppo.org) (last visited Nov. 21, 2006) (for more information on AOPPO).

<sup>12</sup> It should be noted that AOPPO was not alone in identifying the need for statutory revision. The U.S. Department of Health and Human Services Advisory Committee on Organ Transplantation issued recommendations in May of 2003, which called for an update after recognizing the non-uniformity among the states with regard to the UAGA.

<sup>13</sup> *See* [www.nccusl.org](http://www.nccusl.org) (last visited Nov. 21, 2006) (for more information on NCCUSL).

<sup>14</sup> By 2005, it had become difficult to separate those states that had adopted the 1987 changes from those that were non-uniform, due to the variety of amendments in the sixteen years since the 1987 promulgation.

<sup>15</sup> National Organ Transplant Act of 1984, Pub. L. No. 98-507 (codified at 42 U.S.C. §§ 274-74).

<sup>16</sup> 12 C.F.R. § 482.45.

<sup>17</sup> Compare N.Y. PUB. HEALTH LAW art. 43 with N.Y. COMP. CODES R. & REGS. tit. 10, § 405.25.

<sup>18</sup> UNIF. ANATOMICAL GIFT ACT § 2(h) (1987) [hereinafter "1987 UAGA"].

<sup>19</sup> 1987 UAGA § 3(d), § 6(c).

<sup>20</sup> Living donations raise distinct issues best left to other law.

<sup>21</sup> UNIF. ANATOMICAL GIFT ACT § 8 (2006) [hereinafter "2006 UAGA"].

<sup>22</sup> 2006 UAGA §§ 4, 5.

<sup>23</sup> 2006 UAGA § 8(c).

<sup>24</sup> 2006 UAGA § 4(1)(b).

<sup>25</sup> 2006 UAGA § 8(g), (h).

<sup>26</sup> 2006 UAGA §§ 1(1)(b), 5.

<sup>27</sup> 2006 UAGA § 7.

<sup>28</sup> 2006 UAGA § 2(a).

<sup>29</sup> 2006 UAGA § 2(c).

<sup>30</sup> 2006 UAGA § 2(e).

<sup>31</sup> 2006 UAGA § 9(a)(2), (5), (7).

<sup>32</sup> 1987 UAGA § 3.

<sup>33</sup> 2006 UAGA § 9(a)(10).

<sup>34</sup> 2006 UAGA § 9(a)(8).

<sup>35</sup> 2006 UAGA § 9(a)(1).

<sup>36</sup> *Id.*

<sup>37</sup> 2006 UAGA § 9(a)(10).

<sup>38</sup> 2006 UAGA § 9(b).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> 2006 UAGA § 11.

<sup>42</sup> 2006 UAGA § 11.

<sup>43</sup> 1969, 1987 UAGA *passim*.

<sup>44</sup> 2006 UAGA § 14(c).

<sup>45</sup> 2006 UAGA § 14(f).

<sup>46</sup> 2006 UAGA § 14(g).

<sup>47</sup> 2006 UAGA § 19(a).

<sup>48</sup> 2006 UAGA § 18(c).

<sup>49</sup> 2006 UAGA § 21(b).

<sup>50</sup> 2006 UAGA §§ 22, 23.

<sup>51</sup> *See, e.g., Norman v. Nathynaghsanton*, 287 F.3d 786 (9th Cir. 2002); *Boothston v. Cleveland*, 925 F.2d 477 (6th Cir. 1991).



March 14, 2008

The Honorable Peggy Wilson, Chair  
House Health, Education and Social Services Committee  
Alaska State Capitol, Room 403  
Juneau, AK 99801-1181

RE: HB 420 (House Health, Education and Social Services Committee)—Support

Dear Chair Wilson:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Health, Education and Social Services Committee to support your Committee bill HB 420.

HB 420 builds on some of the previous work done by the Legislature to make it easier for Alaskans to make anatomical gifts of their organs. The bill is supported by the Alaska Attorney General.

AARP believes that pre-arranging should take place when the donor is still young and that this planning should be made available to all Alaskans, regardless of income or education, for those in need.

HB 420, among other things, allows donors to choose a recipient for their organs and to make other donations.

If you have any questions regarding this bill, please contact me at the phone number or e-mail address listed below. Thank you for your time and consideration.

Sincerely,  
[Signature]

Should you have any questions or comments, please call Marie Darlin at 907-586-3657 or 907-586-3658.

Thank you for your cooperation.

Sincerely,

*Marie Darlin*

Marie Darlin, Coordinator  
AARF Capital City Task Force  
415 Willoughby Avenue, Apt. 506  
Juneau, AK 99801  
586-3657 (voice)  
453-3580 (fax)

- CC: Vice-Chair Bob Rosen
- Representative Anna Fitch
- Representative Wes Keller
- Representative Paul Seaton
- Representative Berta Gardner
- Representative Sharon Cusack
- Senator Leslie McGuire

