

SB

181

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 5/15/07

FURTHER: State Affairs
Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/18/08

Health, Education and Social Services Committee considered

SENATE BILL NO. 181

SB 181 ANATOMICAL GIFTS

"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."

and recommends:

- be replaced with SCS or CS SB 181 (HES)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

| | |
|-------------------------------------|--------------------------|
| SENATE BILL: | |
| <input checked="" type="checkbox"/> | Same Title |
| <input type="checkbox"/> | New Title |
| HOUSE BILL: | |
| <input type="checkbox"/> | Same Title |
| <input type="checkbox"/> | Technical Title Change |
| <input type="checkbox"/> | New Title w/ SCR # _____ |

NEW FISCAL NOTE(S):

| | | | | | |
|--------|---------|--|--|--|---|
| H.S.S. | 2/11/08 | | | | ✓ |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

PREVIOUS FISCAL NOTE(S):

| | | | | | |
|--|--|--|--|--|--|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

APPROPRIATION - no fiscal note

| | | | | | |
|----------------------------|---------------|---|--|--|--|
| <i>K. V. Ellis</i> | <i>Ellis</i> | ✓ | | | |
| <i>J. J. Thomas</i> | <i>Thomas</i> | ✓ | | | |
| <i>Robert Dizon</i> | <i>Dizon</i> | ✓ | | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>Bettye Davis</i> | <i>PARVIS</i> | ✓ | | | |

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax (907) 269-0219



Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

MEMORANDUM

To: Senator Bettye Davis
Senate Health, Education & Social Services Committee Chair

From: Senator Lesil McGuire

Date: January 28, 2008

Re: Request for hearing, SB 181 – *Anatomical Gifts*

I respectfully request that SB 181 – *Anatomical Gifts* be scheduled for a hearing at your earliest convenience. Attached you will find the most current version of the resolution, a proposed committee substitute, the sponsor statement, and backup information.

If you have any questions or concerns please feel free to contact me personally, or my staff, Trevor Fulton at x3579. Thank you for your time and consideration.

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax (907) 269-0249



Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB181 – Anatomical Gifts

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

Using the 2008 Revised UAGA as a template, SB 181 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, SB 181 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.

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax (907) 269-0249



Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

SB 181 – Anatomical Gifts

Changes from Original Bill to Draft CS

- Page 15, line 22:
Delete "or implied"
- Page 16, line 5:
Delete "is contraindicated by"
Insert "conflicts with"
- Page 16, line 28:
Delete "shall"
Insert "may"
- Page 17, line 29:
Delete "shall"
Insert "may"
- Page 18, lines 2 – 12:
Delete all material
- Page 18, line 13:
Delete "(g)"
Insert "(f)"
- Page 18, line 14:
Delete "under (f) of this section"
Insert "of a part"
- Page 18, line 22:
Delete ", (c), or (f)"
Insert "or (c)"
- Page 18, line 27:
Delete "(i)"
Insert "(h)"
Delete "is required"
Insert "elects"
- Page 18, line 28:
Delete "under (f) of this section"
- Page 18, line 30:
Delete "(f) of"

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
Phone (907) 269-0250
Fax (907) 269-0249



Chair
Senate State Affairs
Administrative Regulation Review

Member
Senate Judiciary Committee
Senate Resources Committee

SENATOR LESIL MCGUIRE

SUMMARY OF CHANGES

SB 181 – Anatomical Gifts

Following discussions with the Department of Law, the Department of Health and Social Services, and representatives of the National Conference of Commissioners on Uniform State Laws, it was agreed that the following changes would be incorporated into a draft committee substitute for SB 181:

1. Reference to "implied terms" of an advance care directive in Sec. 13.52.253 would be deleted;
2. Duties imposed on the State Medical Examiner in Sec. 13.52.257(a) and (e) would be changed to optional, not mandatory;
3. Mandatory attendance at certain medical procedures by the State Medical Examiner in Sec. 13.52.257(f) would be deleted.

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


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

MEMORANDUM

February 6, 2008

SUBJECT: Sectional summary of CSSB 181() relating to the Uniform Anatomical Gift Act (Work Order No. 25-LS0578\E)

TO: Senator Lesil McGuire
Attn: Trevor Fulton

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

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. 13.51.213 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.

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.

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:ljw
08-060.ljw

25-LS0578\E
Bannister
1/25/08

CS FOR SENATE BILL NO. 181()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR MCGUIRE

A BILL
FOR AN ACT ENTITLED

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

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

6 *** Section 1. AS 13.50.140 is amended to read:**

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

14 **(b) The failure of a donor to make the notification under (a) of this section**

1 does not affect the revocation of a gift under AS 13.52.183 [AS 13.52.170].

2 * Sec. 2. AS 13.50.150(a) is amended to read:

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

8 * Sec. 3. AS 13.50.160(b) is amended to read:

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

11 * Sec. 4. AS 13.50.190(3) is amended to read:

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

13 * Sec. 5. AS 13.50.190(8) is amended to read:

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

16 * Sec. 6. AS 13.52.010(a) is amended to read:

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

21 * Sec. 7. AS 13.52.010(k) is amended to read:

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

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

27 (b) Except in the case of mental illness under (c) of this section and except as
28 provided by AS 13.52.183, a principal may revoke all or part of an advance health
29 care directive, other than the designation of an agent, at any time and in any manner
30 that communicates an intent to revoke.
31

1 * **Sec. 9.** AS 13.52.030(a) is amended to read:

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

7 * **Sec. 10.** AS 13.52.030(c) is amended to read:

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

15 (1) the spouse, unless legally separated;

16 (2) an adult child;

17 (3) a parent; or

18 (4) an adult sibling.

19 * **Sec. 11.** AS 13.52.030(d) is amended to read:

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

25 * **Sec. 12.** AS 13.52.040(a) is amended to read:

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

30 * **Sec. 13.** AS 13.52.060(d) is amended to read:

31 (d) Except as provided in (e), (f), and (i) of this section and by AS 13.52.253.

1 a health care provider, health care institution, or health care facility providing care to a
2 patient shall comply with

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

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

9 * Sec. 14. AS 13.52 is amended by adding new sections to read:

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

11 Subject to AS 13.52.193, an anatomical gift of a donor's body or part may be made
12 during the life of the donor for the purpose of transplantation, therapy, research, or
13 education in the manner provided in AS 13.52.177 by

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

15 (A) emancipated; or

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

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

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

21 (4) the donor's guardian; or

22 (5) a surrogate.

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

24 (a) A donor may make an anatomical gift

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

28 (2) in a will;

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

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

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

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

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

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

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

19 * **Sec. 15.** AS 13.52 is amended by adding new sections to read:

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

24 (1) a record signed by
25 (A) the donor;
26 (B) the other person; or
27 (C) subject to (b) of this section, another individual acting at
28 the direction of the donor or the other person if the donor or other person is
29 physically unable to sign; or

30 (2) a later-executed document of gift that amends or revokes a
31 previous anatomical gift or portion of an anatomical gift, either expressly or by

1 inconsistency.

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

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

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

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

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

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

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

20 (1) a record signed by

21 (A) the individual; or

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

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

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

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

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

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

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

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

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

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

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

13 * **Sec. 16.** AS 13.52 is amended by adding new sections to read:

14 **Sec. 13.52.193. Preclusive effect of anatomical gift, amendment, or**
15 **revocation.** (a) Except as otherwise provided in (g) of this section and subject to (f) of
16 this section, in the absence of an express, contrary indication by the donor, a person
17 other than the donor is barred from making, amending, or revoking an anatomical gift
18 of a donor's body or part if the donor made an anatomical gift of the donor's body or
19 part under AS 13.52.177 or an amendment to an anatomical gift of the donor's body or
20 part under AS 13.52.183.

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

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

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

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

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

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

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

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

16 (a) Subject to (b) and (c) of this section and unless barred by AS 13.52.187 or
17 13.52.193, an anatomical gift of a decedent's body or part for the purpose of
18 transplantation, therapy, research, or education may be made by any member of the
19 following classes of persons who is reasonably available, in the order of priority listed:

- 20 (1) an agent of the decedent at the time of death who could have made
21 an anatomical gift under AS 13.52.173(2) immediately before the decedent's death;
- 22 (2) the spouse of the decedent;
- 23 (3) adult children of the decedent;
- 24 (4) parents of the decedent;
- 25 (5) adult siblings of the decedent;
- 26 (6) adult grandchildren of the decedent;
- 27 (7) grandparents of the decedent;
- 28 (8) an adult who exhibited special care and concern for the decedent;
- 29 (9) the persons who were acting as the guardians of the person of the
30 decedent at the time of death; and
- 31 (10) any other person having the authority to dispose of the decedent's

1 body.

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

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

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

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

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

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

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

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

1 revocation.

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

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

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

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

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

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

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

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

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

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

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

1 education.

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

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

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

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

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

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

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

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

22 (j) A person may not accept an anatomical gift if the person knows that the
23 gift was not effectively made under AS 13.52.177 or 13.52.203 or if the person knows
24 that the decedent made a refusal under AS 13.52.187 that was not revoked. For
25 purposes of this subsection, if a person knows that an anatomical gift was made on a
26 document of gift, the person is considered to know of any amendment or revocation of
27 the gift or any refusal to make an anatomical gift on the same document of gift.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) Except as provided by AS 13.52.253, when a hospital refers an individual
2 at or near death to a procurement organization, the organization may conduct any
3 reasonable examination necessary to ensure the medical suitability of a part that is or
4 could be the subject of an anatomical gift for transplantation, therapy, research, or
5 education from a donor or a prospective donor. Except as provided by AS 13.52.055
6 or 13.52.253, during the examination period, measures necessary to ensure the medical
7 suitability of the part may not be withheld or withdrawn, unless the hospital or
8 procurement organization knows that the individual expressed a contrary intent.

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

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

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

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

27 (h) Subject to AS 13.52.207(i) and 13.52.257, the rights of the person to
28 whom a part passes under AS 13.52.207 are superior to the rights of all others with
29 respect to the part. The person may accept or reject an anatomical gift in whole or in
30 part. Subject to the terms of the document of gift and AS 13.52.173 - 13.52.268, a
31 person who accepts an anatomical gift of an entire body may allow embalming, burial,

1 or cremation, and use of remains in a funeral service. If the gift is of a part, the person
2 to whom the part passes under AS 13.52.207, on the death of the donor and before
3 embalming, burial, or cremation, shall cause the part to be removed without
4 unnecessary mutilation.

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

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

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

13 * **Sec. 20.** AS 13.52 is amended by adding a new section to read:

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

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

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

23 **Sec. 13.52.243. Immunity.** (a) Except as provided by AS 13.52.080 -
24 13.52.090, a person who acts under AS 13.52.173 - 13.52.268 or with the applicable
25 anatomical gift law of another state, or attempts in good faith to act under
26 AS 13.52.173 - 13.52.268 or with the applicable anatomical gift law of another state,
27 is not liable for the act in a civil action, a criminal prosecution, or an administrative
28 proceeding.

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

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

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

9 (1) AS 13.52.173 - 13.52.268;

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

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

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

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

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

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

21 Except as provided by AS 13.52.055, if a prospective donor has an advance health
22 care directive, and the terms of the directive and the express terms of a potential
23 anatomical gift are in conflict with regard to the administration of measures necessary
24 to ensure the medical suitability of a part for transplantation or therapy, the
25 prospective donor's attending physician and prospective donor shall confer to resolve
26 the conflict. If the prospective donor is incapable of resolving the conflict, an agent
27 acting under the prospective donor's declaration or directive, or, if none or the agent is
28 not reasonably available, another person authorized by law other than AS 13.52.173 -
29 13.52.268 to make health care decisions on behalf of the prospective donor, shall act
30 for the donor to resolve the conflict. The conflict shall be resolved as expeditiously as
31 possible. Information relevant to the resolution of the conflict may be obtained from

1 the appropriate procurement organization and any other person authorized to make an
2 anatomical gift for the prospective donor under AS 13.52.173 - 13.52.268. Before
3 resolution of the conflict, measures necessary to ensure the medical suitability of the
4 part may not be withheld or withdrawn from the prospective donor unless withholding
5 or withdrawing the measures conflicts with appropriate end-of-life care.

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

10 (b) If a coroner or a state medical examiner receives notice from a
11 procurement organization that an anatomical gift might be available or was made with
12 respect to a decedent whose body is under the jurisdiction of the coroner or state
13 medical examiner and a postmortem examination is going to be performed, unless the
14 coroner or state medical examiner denies recovery under AS 13.52.257, the coroner,
15 the state medical examiner, or a designee shall conduct a postmortem examination of
16 the body or the part in a manner and within a period compatible with its preservation
17 for the purposes of the gift.

18 (c) A part may not be removed from the body of a decedent under the
19 jurisdiction of a coroner or a state medical examiner for transplantation, therapy,
20 research, or education unless the part is the subject of an anatomical gift. The body of
21 a decedent under the jurisdiction of the coroner or state medical examiner may not be
22 delivered to a person for research or education unless the body is the subject of an
23 anatomical gift. This subsection does not preclude a coroner or the state medical
24 examiner from performing the medicolegal investigation on the body or parts of a
25 decedent under the jurisdiction of the coroner or state medical examiner.

26 **Sec. 13.52.257. Facilitation of anatomical gift from decedent whose body is**
27 **under jurisdiction of coroner or state medical examiner.** (a) On request of a
28 procurement organization, a coroner or the state medical examiner may release to the
29 procurement organization the name, contact information, and available medical and
30 social history of a decedent whose body is under the jurisdiction of the coroner or state
31 medical examiner. If the decedent's body, or part is medically suitable for

1 transplantation, therapy, research, or education, the coroner or state medical examiner
2 shall release postmortem examination results to the procurement organization. The
3 procurement organization may make a subsequent disclosure of the postmortem
4 examination results or other information received from the coroner or state medical
5 examiner only if relevant to transplantation or therapy.

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

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

17 (d) If an anatomical gift has been or might be made of a part of a decedent
18 whose body is under the jurisdiction of the coroner or state medical examiner and a
19 postmortem examination is not required, or the coroner or state medical examiner
20 determines that a postmortem examination is required but that the recovery of the part
21 that is the subject of an anatomical gift will not interfere with the examination, the
22 coroner or state medical examiner and the procurement organization shall cooperate in
23 the timely removal of the part from the decedent for the purpose of transplantation,
24 therapy, research, or education.

25 (e) If an anatomical gift of a part from the decedent under the jurisdiction of
26 the coroner or state medical examiner has been or might be made, but the coroner or
27 state medical examiner initially believes that the recovery of the part could interfere
28 with the postmortem investigation into the decedent's cause or manner of death, the
29 coroner or state medical examiner may consult with the procurement organization, or
30 the physician or technician designated by the procurement organization, about the
31 proposed recovery. After consultation, the coroner or state medical examiner may

1 allow the recovery.

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

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

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

8 (3) provide a record with the specific reasons to the procurement
9 organization.

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

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

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

21 **Sec. 13.52.265. Relation to Electronic Signatures in Global and National**
22 **Commerce Act.** AS 13.52.173 - 13.52.267 modify, limit, and supersede 15 U.S.C.
23 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), except
24 that AS 13.52.173 - 13.52.267 do not modify, limit or supersede 15 U.S.C. 7001, or
25 authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).

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

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

31 **Sec. 13.52.268. Definitions for AS 13.52.173 - 13.52.268.** Notwithstanding

1 AS 13.52.390, in AS 13.52.173 - 13.52.268,

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (11) "hospital" means a facility licensed as a hospital under the law of

1 any state or a facility operated as a hospital by the United States, a state, or a
2 subdivision of a state;

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

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

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

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

10 (16) "parent" means a parent whose parental rights have not been
11 terminated;

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

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

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

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

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

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

30 (23) "record" means information that is inscribed on a tangible
31 medium or that is stored in an electronic or another medium and is retrievable in

1 perceivable form;

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

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

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

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

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

13 (27) "state medical examiner" means the state medical examiner
14 appointed under AS 12.65.015(a);

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

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

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

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

27 * Sec. 25. AS 13.52.390(3) is amended to read:

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

1 * **Sec. 26.** AS 13.52.390(30) is amended to read:

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

5 * **Sec. 27.** AS 18.65.311(b) is amended to read:

6 (b) An employee of the department who processes an identification card
7 application, other than an application received by mail, shall ask the applicant orally
8 whether the applicant wishes to execute an anatomical gift. The department shall, by
9 placement of posters and brochures in the office where the application is taken, and by
10 oral advice, if requested, make known to the applicant the method by which the
11 cardholder may make an anatomical gift under AS 13.52. The department shall inform
12 each applicant for an identification card in writing that, if the applicant executes a gift
13 under AS 13.52 and if the gift is made with the registration, the department will
14 transmit the information on the identification card to a donor registry created under
15 AS 13.50.110. The department shall also direct the applicant to notify a procurement
16 organization or the department under AS 13.50.140 if the identification card is
17 destroyed or mutilated or the gift is revoked under AS 13.52.183 [AS 13.52.170]. The
18 department shall carry out the requirements of AS 13.50.100 - 13.50.190.

19 * **Sec. 28.** AS 28.10.021(c) is amended to read:

20 (c) An employee of the department who processes an application for
21 registration or renewal of registration, other than an application received by mail or an
22 application for registration under AS 28.10.152, shall ask the applicant orally whether
23 the applicant wishes to execute an anatomical gift. The department shall make known
24 to all applicants the procedure for executing an anatomical gift under AS 13.52
25 (Health Care Decisions Act) by displaying posters in the offices in which applications
26 are taken, by providing a brochure or other written information to each person who
27 applies in person or by mail, and, if requested, by providing oral advice. The
28 department shall inform each applicant in writing that, if the applicant executes a gift
29 under AS 13.52 and if the gift is made with the registration application, the department
30 will transmit the information on the registration to a donor registry created under
31 AS 13.50.110. The department shall also direct the applicant to notify a procurement

1 organization or the department under AS 13.50.140 if the registration is destroyed or
2 mutilated or the gift is revoked under AS 13.52.183 [AS 13.52.170]. The department
3 shall carry out the requirements of AS 13.50.100 - 13.50.190.

4 * **Sec. 29.** AS 28.15.061(d) is amended to read:

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

19 * **Sec. 30.** AS 28.15.111(b) is amended to read:

20 (b) The department shall provide a method, at the time that an operator's
21 license is issued, by which the owner of a license may make an anatomical gift under
22 AS 13.52. The method must provide a means by which the owner may cancel the
23 anatomical gift. The department shall inform each applicant in writing that, if the
24 applicant executes a gift under AS 13.52 and if the gift is made with the license, the
25 department will transmit the information on the license to a donor registry created
26 under AS 13.50.110. The department shall also direct the applicant to notify a
27 procurement organization or the department under AS 13.50.140 if the license is
28 destroyed or mutilated or the gift is revoked under AS 13.52.183 [AS 13.52.170]. The
29 department shall carry out the requirements of AS 13.50.100 - 13.50.190.

30 * **Sec. 31.** AS 37.05.146(c) is amended by adding a new paragraph to read:

31 (82) donations to the anatomical gift awareness fund under

1 AS 13.50.150.

2 * **Sec. 32.** AS 13.52.170, 13.52.180, 13.52.190, 13.52.200, 13.52.210, 13.52.220, 13.52.230,
3 13.52.240, 13.52.250, 13.52.260, 13.52.265, 13.52.270, 13.52.280, 13.52.390(10),
4 13.52.390(12), 13.52.390(13), and 13.52.390(41) are repealed.

5 * **Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 CONTINUING EFFECT OF EXISTING ANATOMICAL GIFTS. An anatomical gift
8 made under AS 13.52.170 - 13.52.280, repealed by this Act, continues in effect under
9 AS 13.52.173 - 13.52.269, enacted by this Act, until the anatomical gift is revoked under
10 AS 13.52.173 - 13.52.269.



**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.
- 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.
- 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.



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.

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.¹ Approximately nineteen of these patients die every day while still waiting.² 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.³

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

give as many as seven solid organs for transplantation,⁵ in addition to eyes and numerous tissues (including bone) for treatment of burns, cancers, blindness, spinal injuries, among many other conditions. Thus, 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,⁶ yet more than 40% of potentially transplantable organs are buried or cremated,⁷ by conservative estimates.⁸ 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.⁹

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,¹⁰ 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).¹¹ 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.¹²

NCCUSL has worked for the uniformity of state laws since 1892.¹³ 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.¹¹ 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.¹⁵ 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)¹⁶ 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.¹⁷

- 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.¹⁸ 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.¹⁹ 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.²⁰ 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

ANALYSIS

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.²¹ 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.²² Such a gift then bars others from revoking the gift after the child, ward, or principal dies.²³ 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,²⁴ although a parent of the minor can revoke the gift if the minor dies under the age of 18.²⁵ The minor can make that gift on any type of document of gift, not only on a driver's license or permit.²⁶

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.²⁷ 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.²⁸ 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.²⁹ Private organizations may create donor registries without a contract from the state, but they must still satisfy the same three criteria.³⁰

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.³¹ The previous versions of the UAGA also empowered these classes,³² but the 2006 UAGA expands upon the list by adding the decedent's adult grandchildren,³³ as well as any adult who exhibited special care and concern for the decedent.³⁴ 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.³⁵ The 2006 UAGA accords first priority to such an agent.³⁶ 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.³⁷ 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.³⁸ If an objection is known, then the gift can only be made by a majority of the class members who are reasonably available.³⁹ 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.⁴⁰ 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 ameliorated 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*).⁴¹

The 2006 UAGA creates a number of rights and duties for procurement organizations,⁴² 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.⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶

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.⁴⁷ 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.⁴⁸

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.⁴⁹ 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.⁵⁰ 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.⁵¹ 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.

Professor Sheldon F. Kurtz, JD is the Perry Bonduell Distinguished Professor of Law at the University of Iowa College of Law. He served as Reporter for the National Council of Commissioners on Uniform State Laws' Uniform Anatomical Gift Act Drafting Committee.

Christina Woodwart Strong, JD, is a private practitioner in Belle Mead, NJ. Her practice focuses on healthcare law, and the

representation of organ and tissue donation entities. She served as an Observer to the Uniform Anatomical Gift Act Drafting Committee.

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

END NOTES

- ¹ United Network for Organ Sharing (UNOS), www.unos.org (last visited Nov. 21, 2006).
- ² U.S. Dep't of Health and Human Servs., Health Resources and Servs. Admin., Healthcare Sys. Bureau, Div. of Transplantation (HHS/HRSA/HSB/DO), www.organdonor.gov (last visited Nov. 21, 2006).
- ³ 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 59,347 in 2004. HHS/HRSA/HSB/DO, 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 [hereinafter 2005 OPTN/SRTR ANNUAL REPORT 1995-2004].
- ⁴ In 2004, about three out of every four transplanted organs came from a deceased donor. *Id.* at tbl.1.7.
- ⁵ These organs are the heart, lungs, liver, pancreas, two kidneys, and small intestine.
- ⁶ GALLUP ORG., INC., THE AMERICAN PUBLIC'S ATTITUDES TOWARD ORGAN DONATION AND TRANSPLANTATION: A SURVEY (1993), available at www.transweb.org/reference/articles/gallup_survey/gallup_index.html.
- ⁷ 2005 OPTN/SRTR ANNUAL REPORT 1995-2004, *supra* note 3, at tbl.11-2 (showing that, in the first four months of 2005, 57.2% of potential donors actually became donors).
- ⁸ 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., BD. ON HEALTH SCI. POLICY, COMM. ON INCREASING RATES OF ORGAN DONATION, ORGAN DONATION: OPPORTUNITIES FOR ACTION 127 (2006), available at Nat'l Academies Press, www.nap.edu (search for "Organ Donation: Opportunities for Action").
- ⁹ See GALLUP ORG., INC., *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.*
- ¹⁰ AOPO surveyed the following jurisdictions: all fifty states, the District of Columbia, Guam, and the U.S. Virgin Islands.
- ¹¹ See www.aopo.org (last visited Nov. 21, 2006) for more information on AOPO.
- ¹² It should be noted that AOPO 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.
- ¹³ See www.nccusl.org (last visited Nov. 21, 2006) for more information on NCCUSL.
- ¹⁴ By 2003, 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.
- ¹⁵ National Organ Transplant Act of 1984, Pub. L. No. 98-507 (codified at 42 U.S.C. §§ 273-74).
- ¹⁶ 42 C.F.R. § 482.45.
- ¹⁷ Compare N.Y. PUB. HEALTH LAW art. 43 with N.Y. COMP. CODES R. & REGS. tit. 10, § 405.25.
- ¹⁸ UNIF. ANATOMICAL GIFT ACT § 2(h) (1987) [hereinafter 1987 UAGA].
- ¹⁹ 1987 UAGA § 3(d), § 6(c).
- ²⁰ Living donations raise distinct issues best left to other law.
- ²¹ UNIF. ANATOMICAL GIFT ACT § 8 (2006) [hereinafter 2006 UAGA].
- ²² 2006 UAGA §§ 4, 5.
- ²³ 2006 UAGA § 8(c).
- ²⁴ 2006 UAGA § 4(1)(b).
- ²⁵ 2006 UAGA § 8(g), (h).
- ²⁶ 2006 UAGA §§ 4(1)(b), 5.
- ²⁷ 2006 UAGA § 5.
- ²⁸ 2006 UAGA § 20(a).
- ²⁹ 2006 UAGA § 20(c).
- ³⁰ 2006 UAGA § 20(e).
- ³¹ 2006 UAGA § 9(a)(2)-(5), (7).
- ³² 1987 UAGA § 3.
- ³³ 2006 UAGA § 9(a)(6).
- ³⁴ 2006 UAGA § 9(a)(8).
- ³⁵ 2006 UAGA § 9(a)(1).
- ³⁶ *Id.*
- ³⁷ 2006 UAGA § 9(a)(10).
- ³⁸ 2006 UAGA § 9(b).
- ³⁹ *Id.*
- ⁴⁰ *Id.*
- ⁴¹ 2006 UAGA § 11.
- ⁴² 2006 UAGA § 14.
- ⁴³ 1969, 1987 UAGA *passim*.
- ⁴⁴ 2006 UAGA § 14(c).
- ⁴⁵ 2006 UAGA § 14(f).
- ⁴⁶ 2006 UAGA § 14(g).
- ⁴⁷ 2006 UAGA § 19(a).
- ⁴⁸ 2006 UAGA § 18(c).
- ⁴⁹ 2006 UAGA § 21(b).
- ⁵⁰ 2006 UAGA §§ 22, 23.
- ⁵¹ See, e.g., *Neenan v. Sathiyavaglsouran*, 287 F.3d 786 (9th Cir. 2002); *Boothton v. Cleveland*, 923 F.2d 477 (6th Cir. 1991).

DRAFT

FISCAL NOTE

DRAFT

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS SB 181 (HES)
() Publish Date: _____
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.

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

| | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | | | |
|-----------------------------|--|--|--|--|--|--|--|--|

| | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|
| CHANGE IN REVENUES (0) | | | | | | | | |
|-------------------------------|--|--|--|--|--|--|--|--|

| 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) | | | | | | | | |
| TOTAL | | | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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. Woolley
Division: Director of Public Health
Approved by: Karlean Jackson, Commissioner
Agency: Department of Health and Social Services

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

Public Testimony for SB 181

Online

Bruce Zalneraitis
CEO, Life Alaska Donor Services

Mike Gherty
Commissioner for Uniform State Laws

Sherry Badillo-Moreno
Donor family member from Palmer

Kim McGee
Kidney-pancreas recipient from Anchorage

Rob Meyer
Heart recipient from Anchorage.

In person

Deborah Behr and Mike Ford
Department of Law