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LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

MEMORANDUM

April 9, 2008

SUBJECT: SC's CSHB 196(JUD) relating to handling matters after a person's death and to anatomical gifts (Work Order No. 25-LS04470)

TO: Representative Jay Ramras
Attn: Jane Pierceon

FROM: *JB*
Theresa Bannister
Legislative Counsel

After considering the comments you provided and the provisions of the bill, I do not find a contract impairment issue related to the application of AS 13.33.101(d) - (g) to beneficiary designations that occur before the Act takes effect.

If I may be of further assistance, please advise.

TLB:med
08-266.med

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Juneau, Alaska 99801-1182
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MEMORANDUM

April 8, 2008

SUBJECT: SCS CSHB 196(JUD) relating to the handling of matters after a person's death and to anatomical gifts
(Work Order No. 25-LS0447\O)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: *tb*
Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Privacy and liberty issues. Please be aware that new sec. 13.52.253 states that it is subject to the current AS 13.52.055.¹ Because of this, sec. 13.52.253 pulls in and raises the constitutional issues inherent in AS 13.52.055. In particular, AS 13.52.055(b) prohibits implementing advance health care directives in certain cases of pregnancy, which may result in not giving effect to the advance health care directive that is the subject of the conflict under sec. 13.52.253. This, in turn, to the extent that the provision applies to a woman in her first trimester of pregnancy and, possibly, in her second trimester, may violate a woman's liberty interest, under the 14th amendment to the U.S. Constitution, to refuse medical treatment, and a woman's right to privacy based on her fundamental right to make decisions about her body and reproduction under Alaska law.

2. Possible contract impairment issue. In the bill, AS 13.33.101(d) - (g) are applied to beneficiary designations that occur before the Act takes effect. Therefore, they will affect contracts made before the effective date of the Act. If the change substantially affects an existing contract, applying these provisions to the contract could raise a constitutional contract impairment issue. This may not be the case in these situations, but I wanted you to be aware of the issue.

If I may be of further assistance, please advise.

TLB:ljw
08-213.ljw

Enclosure

¹ This exception for AS 13.52.055 does not appear to be part of the Revised Uniform Anatomical Gift Act.

Cindy Smith

From: Jane Pierson
Sent: Wednesday, April 09, 2008 8:06 AM
To: Cindy Smith
Subject: FW: SCS CSHB 196 (JUD) - Legal Services Memo dated April 8, 2008

From: Robert L. Manley [mailto:Bob@mb-lawyers.com]
Sent: Tuesday, April 08, 2008 6:25 PM
To: Rep. Jay Ramras
Cc: Jane Pierson; Sen. Hollis French; Sen. Lesil McGuire; Sen. Charlie Huggins; Sen. Gene Therriault; Sen. Bill Wielechowski; Stephen Greer; Rodney Kleedehn
Subject: SCS CSHB 196 (JUD) - Legal Services Memo dated April 8, 2008

Dear Representative Ramras:

Your office has provided me with a copy of the Legal Services Memo dated April 8, 2008 regarding SCS CSHB 196 (JUD) (Work Order N. 25-LS04470).

As to item #2 labeled "possible contract impairment issues" there is absolutely no need to amend the bill to make it applicable only to Insurance policies or retirement plans created or entered into in the future. The existing applicability language should be retained.

The contract clause analysis is flawed. A beneficiary designation is not a contract that creates rights in a beneficiary, let alone a possible future creditor of an insured person or retirement plan participant. Nothing is paid and the beneficiary designation is not effective until the insured or plan participant dies. Until that time the beneficiary designation is like a will i.e. it has no effect until the testator dies.

More over, if you split out the applicability based on when the policy was purchased or when the retirement plan was established you will have different results in some cases depending on when a policy was obtained or when a beneficiary designation was made. This would add confusion for no good reason. The Bill as written establishes good public policy and is basically a provision protecting widows and orphans from poor planning by the decedent. The application should be broad rather than narrow. Any change would be particularly unfair to employees who obtain life insurance through work and can't arrange for a new policy or retirement plan to better protect their spouse and children.

Note that the Bill specifically provides for the collateral assignment of life insurance policies and thus does not interfere in anyway with the normal use of life insurance in the loan context.

If you have any questions please let me know.

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4/9/2008



April 7, 2008

The Honorable Hollis French, Chair
Senate Judiciary Committee
Alaska State Capitol, Room 417
Juneau, Alaska 99801-1182

RE: HB 196 (House Judiciary Committee)—Support

Dear Chair French:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the Senate Judiciary Committee to support HB 196, sponsored by the House Judiciary Committee.

HB 196 builds on some of the previous work done by the Legislature, especially your Committee colleague Senator McChuire, to make it easier for Alaskans to make anatomical gifts of their organs. The bill is supported by the Alaska Attorney General.

AARP believes that pre-planning should take place when one considers organ donation and that this planning should be conducted to enable the most effective use of donations for those in need.

Any efforts that can be implemented by Alaska to assist willing organ donations to citizens who are in need are welcome.

AARP recommends an "AYE" vote on HB 196.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marie Darlin".

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Charlie Huggins
Senator Lesil McGuire
Senator Bill Wielechowaki
Senator Gene Therriault

Representative Jay Ramras



HOUSE JUDICIARY COMMITTEE

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Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 2, 2008

To: Senator Hollis French
Chair Senate Judiciary Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Request for a Hearing on SCSCSHB196 (25-LS0447L)

Please accept this memo as a request to hear HB196 before the Senate Judiciary Committee. Attached are the following documents:

- Sponsor Statement
- SCR 25-LS1602VA
- SCSCSHB196(STA) 25-LS0447L
- Sectional
- SCSCSHB196(L&C)
- Fiscal Notes
 - LAW - 0
 - HSS - 0
- Bill History
- Back-up
- Letters of Support

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

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Chairman

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Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

SPONSOR STATEMENT

HB 196 "An Act relating to matters after a person's death"

HB196 modernizes provisions for handling matters after a persons' death, by bringing statutory language for estates as well as anatomical gifts current with modern laws.

Sections 1 - 5 of HB196 deal with bring estate planning laws current. These sections streamline estates to make them as efficient as possible by, being able to enforce a no-contest provision to a will, by making handling small estates easier and less expensive, and by making changes to beneficiary designations in qualified plans.

These provisions will bring wills in line with laws governing revocable trusts that are used in estate planning. HB196 will raise the limit of probate waiver requirements from \$15,000 to \$100,000 for personal property, and \$100,000 for vehicles. Additionally, this legislation will keep creditors from being able to reach into proceeds of qualified plans and revocable trusts.

HB196 will also clarify Alaska statutes governing anatomical gifts by bringing them in sync with the revised Uniform Anatomical Gift Act (UAGA). The UAGA has served as a template for harmonizing anatomical gift laws in all 50 states.

Alaskans have shown their deep commitment by joining the Alaska Donor Registry (ADR) in record numbers since its inception in 2004. Over 330,000 Alaskans have joined the ADR, with 800 – 1,000 new registrations added each week. These impressive numbers show Alaskans' support for organ and tissue donation. However, the list of those waiting for a transplant has grown to nearly 100,000 patients in length, eighteen of which die each day. Right now in Alaska 180 patients are in need of a life-saving transplant and are waiting for donated organs to become available.

By mirroring language in the language in the 2008 revised UAGA, HB196 improves anatomical gift law in Alaska and, in doing so, encourages and facilitates badly needed organ donations that will save and improve lives all through the state and the country.

Alaska State Legislature

Session:

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Representative Jay Ramras House District 10

Chair, House Judiciary Committee • Member, House Labor & Commerce Committee • Member, House Oil & Gas Committee • Member, House Military & Veteran Affairs Committee

Sectional Analysis HB 196 – Handling Matters After a Person's Death

Section 1. Amends AS 13.12.517 to provide that a penalty clause for contesting a will or instituting other proceedings apply even if probable cause exists for instituting the proceedings.

Section 2. Amends AS 13.16.680(a) to change one of the statements that must be contained in an affidavit to be used by a decedent's successor to collect personal property of the decedent from another person. The statement indicates that the value of the entire estate does not consist of more than certain specified amounts.

Section 3. Amends AS 13.16.700 to conform this section to the change made by this bill to AS 13.16.680(a).

Section 4 Adds new subsections to AS 13.33.101 (nonprobate transfers upon death)

Proposed AS 13.33.101(d) states that the benefits paid under a nonprobate provision are not subject to certain described debts or creditor claims.

Proposed AS 13.33.101(e) describes certain situations in which proposed AS 13.33.101(d) applies.

Proposed AS 13.33.101(f) establishes that proposed AS 13.33.101(d) does not limit the rights of the owner of a life insurance contract to pledge or assign the benefits as collateral for the owner's debts.

Proposed AS 13.33.101(g) defines "life insurance contract" and "retirement plan" for (d) of this section.

Section 5. AS 13.50.140 Makes a conforming amendment to a section dealing with the donor registry program.

Section 6. AS 13.50.150(a) Limits the purpose of donations to in-state promotions of anatomical donations.

Section 7. AS 14.50.160(b) Limits the anatomical gift purpose to the fund to in-state promotions.

Section 8. AS 13.50.190(3) Makes a conforming amendment to the definition of the donor registry program.

Section 9. AS 13.50.190(8) Makes a conforming amendment to the definition of the donor registry program.

Section 10. AS 13.52.010(a) Makes a conforming amendment to certain requirements for individual instruction.

Section 11. AS 13.52.010(k) 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 12. AS 13.52.020(b) Makes a conforming amendment to the section addressing the revocation of an advance health care directive.

Section 13. AS 13.52.030(a) Makes a conforming amendment.

Section 14. AS 13.52.030(c) Makes a conforming amendment.

Section 15. AS 13.52.030(d) Makes a conforming amendment.

Section 16. AS 13.52.040(a) Makes a conforming amendment to the provision addressing guardian compliance with individual instruction and revocation of health care directives.

Section 17. AS 13.52.060(d) 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 18.

AS 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 transplant, therapy, research, and education. Describes who can make a gift.

AS 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 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 19.

AS 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.

AS 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 part bars other persons from making the gift.

Section 20.

AS 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 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.

AS 13.52.197 allows for the making of a gift of a decedent's body 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 21.

AS 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.

AS 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 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 22.

AS 13.51.213 requires the listed person 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.

AS 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 23.

AS 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 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 a part. Generally allows for examination of all donor's medical and dental records.

Requires at an unemancipated minor's death, if a minor was a donor or had signed a refusal, an organization to search for the parents and to provide them the opportunity to revoke or amend the gift or to 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.

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

Section 24.

AS 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 handling anatomical parts.

Section 25.

AS 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.

AS 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 revoked.

Section 26.

AS 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.

AS 13.52.255 requires a coroner and a state medical examiner to cooperate with procurement organizations to maximize 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.

AS 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 jurisdiction of the coroner or state medical examiner, a postmortem examination is not required, or if the examination is required but the part recovery will not 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 27. AS 13.52.263 States how these gift sections relate to the federal Electronic Signatures in Global and National Commerce Act.

Section 28.

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

AS 13.52.268 defines terms for the anatomical gift sections.

Section 29. AS 13.52.390(3) Amends the definition of "anatomical gift" for general application in AS 13.52.

Section 30. AS 13.52.390(30) Amends the definition of "part" for general application in AS 13.52.

Section 31. AS 18.65.311(b) Makes a conforming amendment in a section related to the state identification card section.

Section 32. AS 28.10.021(c) Makes a conforming amendment in a section related to vehicle registration.

Section 33. AS 28.15.061(d) Makes a conforming amendment in a section related to driver's license applications.

Section 34. AS 28.15.111(b) Makes a conforming amendment in a section relating to issuance of drivers' licenses.

Section 35 AS 37.05.146(c) Adds donations (to the anatomical gift awareness fund) to a list of program receipts that are accounted for separately.

Section 36 Repeals the current sections and definitions in AS 13.52 that relate to anatomical gifts.

Section 37. Provides a transition section to indicate to which decedents and nonprobate transfer provisions certain provisions of the bill apply.

Section 38. Provides that anatomical gifts made under repealed sections continue to be effective until the anatomical gifts are revoked.



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

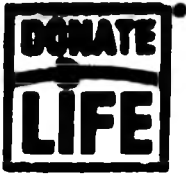
Organized Labor

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." -- Pandy Small, heart transplant recipient, Bothell, WA



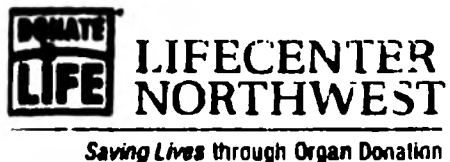
UAGA Backgrounder

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.



**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.
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- It more clearly prioritizes donation for transplantation over donation for research.
- This revision of the UAGA is strongly supported by local and national organ and tissue donation agencies and governing bodies as well as multiple medical associations, societies, and foundations.

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

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

Sheldon F. 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 seventeen 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 not fully 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.¹² 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)¹³ 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 contacting 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

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.³¹ 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.³² Such a gift then bars others from revoking the gift after the child, ward, or principal dies.³³ 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,³⁴ although a parent of the minor can revoke the gift if the minor dies under the age of 18.³⁵ The minor can make that gift on any type of document of gift, not only on a driver's license or permit.³⁶

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.³⁷ 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.³⁸ 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 to whom a donor 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.³⁹ Private organizations may create donor registries without a contract from the state, but they must still satisfy the same three criteria.⁴⁰

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.⁴¹ The previous versions of the UAGA also empowered these classes,⁴² but the 2006 UAGA expands upon the list by adding the decedent's adult grandchildren,⁴³ as well as any adult who exhibited special care and concern for the decedent.⁴⁴ 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.⁴⁵ The 2006 UAGA accords first priority to such an agent.⁴⁶ 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.⁴⁷ 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.⁴⁸ If an objection is known, then the gift can only be made by a majority of the class members who are reasonably available.⁴⁹ 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.⁵⁰ 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 1.)

The 2006 UAGA creates a number of rights and duties for procurement organizations. 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 donor 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 and the coroner and

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 provisions

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 Percy Bordenell 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 Gifts Act Drafting Committee.

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

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

The authors are grateful for the valuable assistance of David Carusmano, 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 CALL FOR ORG. ISM: THE AMERICAN PUBLIC'S ATTITUDES TOWARD ORGAN DONATION AND TRANSPLANTATION: A SURVEY (1997), available at www.transweb.org; reference articles, gallup.com/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 deceased donors became donors).
- ⁸ See UNOS statistics on www.unos.org and www.organdonor.gov (showing that the number of deceased

- 60%. See NAT'L ACADEMIES, INST. OF MED., DE. ON HEALTH SERVS. POLICY, CHANGING 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 CALL FOR ORG. ISM, *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 AOPD 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 AOPD.
- ¹² It should be noted that AOPD 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.ncsl.org (last visited Nov. 21, 2006) for more information on NCUSL.
- 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 nature of amendments in the sixteen years since the 1987 promulgation. National Organ Transplant Act of 1984, Pub. L. No. 98-507, 98 Stat. 2757, 42 U.S.C. §§ 2757-71.
- ¹⁵ 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 1989, 1987 UAGA *provisi*.
- ⁴⁴ 2006 UAGA § 14(c).
- ⁴⁵ 2006 UAGA § 14(d).
- 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., *International, National, and State* 257 F.3d 786 (9th Cir. 2002); *Bohannon v. State*, 2002 F.3d 677 (10th Cir. 1999).

Jane Pierson

From: Patty Krueger on behalf of Rep. Jay Ramras
Sent: Friday, February 22, 2008 10:33 AM
To: Jane Pierson
Subject: FW: HB 196

From: Stephen E. Greer [mailto:greer@ak.net]
Sent: Thursday, February 21, 2008 5:49 PM
To: Rep. Jay Ramras
Subject: HB 196

Dear Rep. Ramras- today I testified in support of HB 196 in Senate Labor and Commerce. As you know, this bill makes several changes to the Uniform Probate Code as enacted by Alaska in the early 80s. Section 2 and 3 of the bill raised the most questions. These sections raise the threshold in which a formal probate would not be required where the decedent dies with less than \$25,000 of personal property and less than \$100,000 of value in automobiles. Currently our law states that a formal probate proceeding can be only be avoided when the decedent dies with less than \$ 15,000 of personal property. It was suggested that the limit set forth in HB 196 be increased to even higher amounts than those set forth in the bill. I would certainly be willing to work with any legislator who wants to re-examine the amounts set forth in the bill but this should be done in a new bill next year. Due to the shortness of time remaining in the legislative session, if HB 196 does not become law during this session, then Alaska residents will continue to be saddled with the present \$15,000 threshold, which everyone seems to agree is entirely too low.

If it is suggested that the threshold in which probate can be avoided be increased to an amount in excess of what the bill presently allows, one needs to be cautioned that there is always a flip side to an increased amount. For instance, let us take a situation where mom dies with a bank account of \$50,000. She has 2 sons, one who has been the good child and another child who has been particularly bad to her. Mom's will leaves everything to the good child. If the threshold amount in which probate would not be required were raised to \$ 50,000 there would be nothing to prevent the bad son from going to the bank prior to the good son and getting this amount from the bank and absconding with the funds. Setting forth a higher amount in which a formal probate would not be required also increases the potential for abuse. Although it was agreed by the drafters of this bill that the present \$15,000 was too low, the bill was also carefully tailored to prevent it from being used as a tool in which the small estate affidavit procedure could be abused.

I sent this message to all committee members requesting their support of the bill. It is certainly an improvement over the current law. If a legislator desires to re-examine these amounts next year I would be all too glad to assist in that endeavor and of course answer any question that a legislator might have.

Thank you for your consideration in this matter.

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----- Original Message -----

From: Robert L. Manley
To: 'Senator_Johnny_Ellis@legis.state.ak.us'
Sent: 2/21/2008 3:34PM
Subject: HB 196 - Act Relating to the Handling of Matters After a Person's Death

Dear Senator Ellis:

Thank you and the Labor and Commerce Committee for considering HB 196 at the February 21 hearing. Senator Bunde inquired about the selection of the new limit of \$25,000 for use of the probate waiver affidavit on non-motor vehicle assets. The probate waiver affidavit procedure is a Uniform Probate Code Provision and the shift to \$25,000 is basically a consumer price index adjustment. While some states have established higher limits, the thinking behind the \$25,000 limit is that like any abbreviated and non-court supervised procedure there is some risk of abuse. If a person improperly uses the procedure, cash assets are generally disposed of promptly while automobiles are traceable assets which are less subject to abuse even at the \$100,000 level.

This is not an attempt to retain more money for lawyers by running small probates. If that was the goal then the informal working group on this legislation would not have proposed the change at all. If the Committee wants to increase the general limit I suggest that it be done by separate legislation because an amendment at this point is likely to doom HB 196 for this year. At best an amendment would effectively kill the other good provisions of HB 196 in return for making a small part of the legislation better if the bill is reintroduced in the next Legislature. I know you have heard this before, but given the short session, I respectfully request that you release HB 196 so it can be considered by the State Affairs and Judiciary Committees. If any Committee members would like to discuss this further please contact me.

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Jane Pierson

From: Douglas Blattmachr [dblattmachr@alaskatrust.com]
Sent: Friday, February 22, 2008 9:48 AM
To: Jane Pierson
Subject: FW: HB 196

From: Blattmachr, Jonathan [mailto:JBlattmachr@milbank.com]
Sent: Friday, February 22, 2008 3:32 AM
To: Senator_Johnny_Ellis@legis.state.ak.us
Cc: bob@mb.law.pro; greer@ak.net; Douglas Blattmachr; bchapman@faulknerbanfield.com; dshaftel@shaftellaw.com; rich@hompesch.com; lhulbert@gci.net
Subject: HB 196

Dear Senator Ellis:

I have been a member of the Alaska bar for 20 years and was the principal drafter of the Alaska Trust Act which became law in 1997 and participated in the drafting of HB 196.

I practice primarily in New York and California, almost exclusively in the areas of estate planning and administration. Probably, 8 out of 10 of my clients choose to use Alaska as the jurisdiction to govern at least a portion of their estate planning documents. This has been so successful for Alaska (bringing jobs and funds to the state) that several other states (including Delaware, Florida, Utah, Rhode Island and others) have copied many of Alaska's trust and related laws.

In my opinion, HB 196 will continue to keep Alaska in the forefront of the estate planning world. I respectfully request that it be enacted.

Respectfully yours,

Jonathan Blattmachr

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2/22/2008

Jane Pierson

From: lhulbert [lhulbert@gci.net]
Sent: Monday, April 23, 2007 10:32 AM
To: Jane Pierson
Subject: HB's 195, 196, 197

Representative Ramras,

I would like to support House Bills 195, 196 and 197. I have been in the insurance industry for the last 16 years and have worked closely with legislature including the AK Trust Act, Com. Property Act and the Change to the State Premium Tax. I support these three House Bills as it will improve estate planning opportunities for alaskans and bring new business and revenue to the State.

Linda Hulbert
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March 14, 2008

The Honorable Peggy Wilson, Chair
House Health, Education and Social Services Committee
Alaska State Capitol, Room 405
Juneau, AK 99801-1182

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

Dear Chair Wilson:

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

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

AARP believes that pre-planning should take place when one considers organ donation and that this planning should be standardized to enable the most effective use of donations for those in need.

HB 420 will, among other things, allow monetary donations to organizations that foster and enable organ donations.

Any efforts that can be implemented by Alaska to serve willing organ donors and organ recipients who are in need are welcome.

AARP is pleased to have you as our representative.

MEMORANDUM FOR THE RECORD

DATE: 10/15/01

TO: [illegible]

Maria Darlin

Maria Darlin, Coordinator
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- CC: Vice-Chair Bob Rosen
Representative Anna Faisclough
Representative Wes Keller
Representative Paul Sestan
Representative Berta Gardner
Representative Sharon Cistna
Senator Lesil McGuire