

4471

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 4, 2009

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Introduced by M. of A. BRODSKY, JEFFRIES -- Multi-Sponsored by -- M. of  
A. DIAZ, KELLNER, LATIMER, PERRY, TOWNS -- read once and referred to  
the Committee on Transportation

AN ACT to amend the state finance law, the vehicle and traffic law, the  
public health law and the tax law, in relation to anatomical gifts,  
rights and responsibilities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The section heading and subdivision 1 of section 95-d of  
2     the state finance law, as added by chapter 415 of the laws of 2003, are  
3     amended to read as follows:  
4     "[Life pass it on] NEW YORK STATE DONATE LIFE trust fund". 1. There is  
5     hereby established in the joint custody of the commissioner of taxation  
6     and finance and the comptroller, a special fund to be known as the  
7     "[life pass it on] NEW YORK STATE DONATE LIFE trust fund".  
8     S 2. Section 404-u of the vehicle and traffic law, as added by chapter  
9     415 of the laws of 2003, is amended to read as follows:  
10    S 404-u. Distinctive gift of life license plates. 1. Any person resid-  
11    ing in this state shall upon request be issued a distinctive license  
12    plate bearing the words "[Life Pass It On] DONATE LIFE". Application for  
13    said license plates shall be filed with the commissioner in such form  
14    and detail as the commissioner shall prescribe.  
15    2. Any distinctive plate issued pursuant to this section shall be  
16    issued in the same manner as other number plates upon the payment of the  
17    regular registration fee prescribed by section four hundred one of this  
18    article provided, however, that an additional annual service charge of  
19    twenty-five dollars shall be charged for such plate. Twenty dollars of  
20    each such twenty-five dollar annual service charge shall be deposited to  
21    the credit of the "[life pass it on] NEW YORK STATE DONATE LIFE trust  
22    fund" established pursuant to section ninety-five-d of the state finance  
23    law and shall be used for research and education programs approved by

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 the commissioner of health. Provided, however that one year after the  
2 effective date of this section, funds in the amount of five thousand  
3 dollars, or so much thereof as may be available, shall be allocated to  
4 the department to offset costs associated with the production of such  
5 license plates.

6 S 3. Subdivision 1 of section 502 of the vehicle and traffic law, as  
7 amended by chapter 639 of the laws of 2006, is amended to read as  
8 follows:

9 1. Application for license. Application for a driver's license shall  
10 be made to the commissioner. The fee prescribed by law may be submitted  
11 with such application. The applicant shall furnish such proof of identi-  
12 ty, age, and fitness as may be required by the commissioner. The commis-  
13 sioner may also provide that the application procedure shall include the  
14 taking of a photo image or images of the applicant in accordance with  
15 rules and regulations prescribed by the commissioner. In addition, the  
16 commissioner also shall require that the applicant provide his or her  
17 social security number and provide space on the application so that the  
18 applicant may register CONSENT TO MAKE AN ANATOMICAL GIFT AND BE  
19 ENROLLED in the New York state [organ and tissue donor] DONATE LIFE  
20 registry [under] PURSUANT TO section forty-three hundred ten of the  
21 public health law, AS INDICATED BY THE APPLICANT'S SIGNATURE WITHIN A  
22 DESIGNATED AREA THAT IS SEPARATE FROM THE FINAL SIGNATURE CERTIFYING THE  
23 VALIDITY OF THE INFORMATION PROVIDED IN THE OVERALL APPLICATION FOR A  
24 DRIVER'S LICENSE. In addition, an applicant for a commercial driver's  
25 license who will operate a commercial motor vehicle in interstate  
26 commerce shall certify that such applicant meets the requirements to  
27 operate a commercial motor vehicle, as set forth in public law 99-570,  
28 title XII, and title 49 of the code of federal regulations, and all  
29 regulations promulgated by the United States secretary of transportation  
30 under the hazardous materials transportation act. Upon a determination  
31 that the holder of a commercial driver's license has made any false  
32 statement, with respect to the application for such license, the commis-  
33 sioner shall revoke such license.

34 S 4. Paragraph (a) of subdivision 1 of section 504 of the vehicle and  
35 traffic law, as separately amended by chapters 568 and 639 of the laws  
36 of 2006, is amended to read as follows:

37 (a) Every license or renewal thereof shall contain [a distinguishing  
38 mark and] adequate space upon which an anatomical gift, pursuant to  
39 section forty-three hundred ten of the public health law, by the licen-  
40 see shall be recorded and shall contain such other information and shall  
41 be issued in such form as the commissioner shall determine; provided,  
42 however, every license or renewal thereof issued to a person under the  
43 age of twenty-one years shall have prominently imprinted upon it the  
44 statement "UNDER 21 YEARS OF AGE" in notably distinctive print or  
45 format; provided further, however, every license or renewal thereof  
46 issued to a person [making an anatomical gift] WHO HAS CONSENTED TO MAKE  
47 AN ANATOMICAL GIFT AND BE ENROLLED IN THE NEW YORK STATE DONATE LIFE  
48 REGISTRY PURSUANT TO SECTION FORTY-THREE HUNDRED TEN OF THE PUBLIC  
49 HEALTH LAW THROUGH THE DEPARTMENT shall have prominently printed upon  
50 the front of such license or renewal thereof the statement "ORGAN DONOR"  
51 in notably distinctive print or format. The commissioner shall not  
52 require fees for the issuance of such licenses or renewals thereof to  
53 persons under twenty-one years of age or to persons making an anatomical  
54 gift which are different from the fees required for the issuance of  
55 licenses or renewals thereof to persons twenty-one years of age or over  
56 or to persons not making an anatomical gift.

1 S 5. Section 4301 of the public health law, as amended by chapter 62  
2 of the laws of 1994 and subdivisions 1 and 3 as amended by chapter 639  
3 of the laws of 2006, is amended to read as follows:

4 S 4301. Persons who may execute an anatomical gift. 1. Any individual  
5 of sound mind and eighteen years of age or more may give all or any part  
6 of his or her body for any purpose specified in section [four thousand  
7 three] FORTY-THREE hundred two of this article, the gift to take effect  
8 upon death. In any case where the donor has properly executed an organ  
9 donor card, driver's license authorization to make an anatomical gift,  
10 pursuant to paragraph (a) of subdivision one of section five hundred  
11 four of the vehicle and traffic law, [registered] CONSENTED TO MAKE AN  
12 ANATOMICAL GIFT AND BE ENROLLED in the New York state [organ and tissue  
13 donor] DONATE LIFE registry [under] PURSUANT TO section forty-three  
14 hundred ten of this article, or has otherwise given written authori-  
15 zation for organ or tissue donation, authorization for donation shall  
16 not be rescinded by an objection by a member of any of the classes spec-  
17 ified in paragraphs (a) through (f) of subdivision two of this section,  
18 except upon a showing that the donor revoked the authorization.

19 2. Any of the following persons, in the order of priority stated, may,  
20 when persons in prior classes are not available at the time of death,  
21 and in the absence of actual notice of contrary indications by the dece-  
22 dent, or actual notice of opposition by a member of the same class or  
23 prior class specified in paragraph (a), (b), (c), (d) or (e) of this  
24 subdivision, or reason to believe that an anatomical gift is contrary to  
25 the decedent's religious or moral beliefs, give all or any part of the  
26 decedent's body for any purpose specified in section four thousand three  
27 hundred two of this article:

- 28 (a) the spouse,
- 29 (b) a son or daughter eighteen years of age or older,
- 30 (c) either parent,
- 31 (d) a brother or sister eighteen years of age or older,
- 32 (e) a guardian of the person of the decedent at the time of his OR HER  
33 death,
- 34 (f) any other person authorized or under the obligation to dispose of  
35 the body.

36 3. The donee shall not accept the gift under the following circum-  
37 stances:

- 38 (a) the donee has actual notice of contrary indication by the dece-  
39 dent;
- 40 (b) where the donor has not properly executed an organ donor card,  
41 driver's license authorization to make an anatomical gift, pursuant to  
42 paragraph (a) of subdivision one of section five hundred four of the  
43 vehicle and traffic law, [registered] CONSENTED TO MAKE AN ANATOMICAL  
44 GIFT AND BE ENROLLED in the New York state [organ and tissue donor]  
45 DONATE LIFE registry [under] PURSUANT TO section forty-three hundred ten  
46 of this article, or otherwise given written authorization for organ or  
47 tissue donation, or has revoked any such authorization, and the gift is  
48 opposed by a person or persons in the highest priority available of the  
49 classes specified in paragraph (a), (b), (c), (d) or (e) of subdivision  
50 two of this section; or
- 51 (c) the donee has reason to believe that an anatomical gift is contra-  
52 ry to the decedent's religious or moral beliefs.

53 4. A gift of all or part of a body authorizes any examination neces-  
54 sary to assure medical acceptability of gift for the purposes intended.

1 5. The rights of the donee created by the gift are paramount to the  
2 rights of others except as provided by section [four thousand three]  
3 FORTY-THREE hundred eight of this article.

4 S 6. Section 4310 of the public health law, as amended by chapter 639  
5 of the laws of 2006, the section heading and subdivision 1 as separately  
6 amended by chapter 640 of the laws of 2006 and subdivision 2 as amended  
7 by chapter 362 of the laws of 2008, is amended to read as follows:

8 S 4310. New York state donate life registry for organ and tissue  
9 donations. 1. The department shall establish an organ and tissue donor  
10 registry, which shall be called and be referred to as the "NEW YORK  
11 STATE donate life registry", which shall contain a listing of all donors  
12 who have [declared their consent] CONSENTED to make an anatomical gift  
13 ON FORMS PROVIDED BY, AND FILED WITH, THE DEPARTMENT OF MOTOR VEHICLES  
14 OR THE DEPARTMENT.

15 2. Such registration of consent to make an anatomical gift can be made  
16 through (a) [indication] A CONSENT made on the application or renewal  
17 form of a DRIVER'S license, OR (b) [indication] A CONSENT made on a  
18 non-driver identification card application or renewal form, OR (c)  
19 enrolling in the registry website maintained by the department, OR (d)  
20 indication made on a voter registration form pursuant to subdivision  
21 five of section 5-210 of the election law, or (e) through any other  
22 method identified by the commissioner. The registration shall take  
23 effect upon the department sending written notice of the registration to  
24 the person enrolling in the registry.

25 3. (a) Information contained in the registry shall be accessible to  
26 (i) federally regulated organ procurement agencies, (ii) eye and tissue  
27 banks licensed by the department pursuant to article forty-three-B of  
28 this chapter, (iii) any other entity formally approved by the commis-  
29 sioner.

30 (b) The information contained in the registry shall not be released to  
31 any person except as expressly authorized by this section solely for the  
32 purpose of identifying potential organ and tissue donors at or near the  
33 time of death.

34 (C) FEDERALLY REGULATED ORGAN PROCUREMENT ORGANIZATIONS, AND NEW YORK  
35 STATE LICENSED TISSUE BANKS, HOSPITALS AND HEALTH CARE PROFESSIONALS,  
36 AND THEIR AGENTS AND EMPLOYEES, WHO PROCURE ORGANS AND TISSUES IN  
37 REASONABLE AND GOOD FAITH RELIANCE ON THE INFORMATION PROVIDED IN THE  
38 NEW YORK STATE DONATE LIFE REGISTRY SHALL NOT BE LIABLE FOR DAMAGES IN  
39 ANY CIVIL ACTION OR SUBJECT TO PROSECUTION IN ANY CRIMINAL PROCEEDING  
40 FOR HIS OR HER ACTS.

41 (D) THE STATE OF NEW YORK AND ITS AGENTS AND EMPLOYEES SHALL NOT BE  
42 LIABLE FOR ANY ACT OR OMISSION RELATED TO THE ENTRY OF INFORMATION INTO  
43 THE NEW YORK STATE DONATE LIFE REGISTRY WHERE SUCH AGENT OR EMPLOYEE  
44 ACTED REASONABLY AND IN GOOD FAITH IN THE PERFORMANCE OF HIS OR HER  
45 DUTIES.

46 4. [If the department had an established registry prior to the effec-  
47 tive date of this section, it shall be deemed to meet the requirements  
48 of this section.

49 5.] The registry shall provide persons enrolled the opportunity to  
50 specify which organs and tissues they want to donate and if the donation  
51 can be used FOR CONSENT OF THE DONATION OF ORGANS, TISSUES, EYES, OR ALL  
52 BODY PARTS for transplantation, THERAPY AND research, [or both] OR ANY  
53 COMBINATION THEREOF. IF A PERSON DOES NOT RESTRICT HIS OR HER DONATION,  
54 THE CONSENT SHALL BE DEEMED TO BE A CONSENT FOR ANY AND ALL ORGANS AND  
55 TISSUES FOR TRANSPLANTATION, THERAPY AND RESEARCH PURPOSES.

1 [6] 5. A person registered in the [organ and tissue] NEW YORK STATE  
2 DONATE LIFE registry before the effective date of this subdivision shall  
3 be deemed to have expressed intent to donate, until and unless he or she  
4 files an amendment to his or her registration or a new registration  
5 expressing consent to donate.

6 [7. The] 6. TO THE EXTENT PRACTICABLE, THE commissioner shall contact  
7 each person registered before the effective date of this subdivision in  
8 the [organ and tissue] NEW YORK STATE DONATE LIFE registry in writing to  
9 inform him or her that at the time he or she registered, the registry  
10 was that of intent and that the registry is now one of consent, to  
11 explain in clear and understandable terms the difference between intent  
12 and consent, and to provide opportunity for the person to change his or  
13 her registration to provide consent by amending his or her current  
14 registration or executing a new registration.

15 [8] 7. The commissioner is authorized to promulgate rules and regu-  
16 lations necessary to implement the provisions of this section.

17 S 7. Paragraph 38 of subsection (c) of section 612 of the tax law, as  
18 added by chapter 565 of the laws of 2006, is amended to read as follows:

19 (38) An amount of up to ten thousand dollars if a taxpayer, while  
20 living, donates one or more of his or her human organs to another human  
21 being for human organ transplantation. For purposes of this paragraph,  
22 "human organ" means all or part of a liver, pancreas, kidney, intestine,  
23 lung, or bone marrow. A subtract modification allowed under this para-  
24 graph shall be claimed in the taxable year in which the human organ  
25 transplantation occurs, AND MAY ALSO BE CLAIMED IN THE TAXABLE YEAR  
26 IMMEDIATELY PRECEDING OR IMMEDIATELY FOLLOWING THE TRANSPLANT PROVIDED  
27 THAT THE COMBINED AMOUNT CLAIMED BY THE DONOR DOES NOT EXCEED A TOTAL OF  
28 TEN THOUSAND DOLLARS.

29 (A) A taxpayer shall claim the subtract modification allowed under  
30 this paragraph only once and such subtract modification shall be claimed  
31 for only the following unreimbursed expenses which are incurred by the  
32 taxpayer and related to the taxpayer's organ donation:

33 (i) travel expenses;

34 (ii) lodging expenses; and

35 (iii) lost wages.

36 (B) The subtract modification allowed under this paragraph shall not  
37 be claimed by a part-year resident or a non-resident of this state.

38 S 8. This act shall take effect immediately and shall apply to anatom-  
39 ical gifts donated and consented to on or after July 1, 2011.