S T A T E  O F  N E W  Y O R K

4488

2009-2010 Regular Sessions

I N  S E N A T E

April 24, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to creating the anatomical gift act; to amend the public health law and the vehicle and traffic law, in relation to making certain technical amendments thereto; and to repeal articles 43 and 43-A of the public health law relating to anatomical gifts

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

Section 1. This act shall be known and may be cited as the "Anatomical Gift Act".

S 2. Articles 43 and 43-A of the public health law are REPEALED and a new article 43 is added to read as follows:

ARTICLE 43

ANATOMICAL GIFTS

SECTION 4300. DEFINITIONS.
4301. APPLICATION.
4302. PERSONS WHO MAY MAKE AN ANATOMICAL GIFT BEFORE DONOR'S DEATH.
4303. MANNER OF MAKING AN ANATOMICAL GIFT BEFORE DONOR'S DEATH.
4304. AMENDING OR REVOKING AN ANATOMICAL GIFT BEFORE DONOR'S DEATH.
4305. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT OR REVOCATION.
4306. PERSONS WHO MAKE AN ANATOMICAL GIFT OF A DECEDENT'S BODY OR PART.
4307. MANNER OF MAKING, AMENDING OR REVOKING AN ANATOMICAL GIFT OF A DECEDENT'S BODY OR PART.
4308. PERSONS WHO MAY RECEIVE AN ANATOMICAL GIFT; PURPOSE OF AN ANATOMICAL GIFT.
4309. SEARCH AND NOTIFICATION.

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

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4310. DELIVERY OF DOCUMENT OF GIFT; RIGHT TO EXAMINE.
4311. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS.
4312. COORDINATION OF PROCUREMENT AND USE.
4313. SALE OR PURCHASE OF PARTS PROHIBITED.
4314. OTHER PROHIBITED ACTS.
4315. IMMUNITY.
4316. LAW GOVERNING VALIDITY.
4317. NEW YORK STATE DONATE LIFE REGISTRY.
4318. EFFECT OF ANATOMICAL GIFT ON ADVANCE HEALTH-CARE DIRECTIVE.
4319. COOPERATION BETWEEN THE CORONER OR MEDICAL EXAMINER AND PROCUREMENT ORGANIZATION.
4320. RELEASE OF RECORDS.

S 4300. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ADULT" MEANS AN INDIVIDUAL WHO IS AT LEAST EIGHTEEN YEARS OF AGE.

2. "AGENT" MEANS AN INDIVIDUAL:

(A) AUTHORIZED TO MAKE HEALTH-CARE DECISIONS ON THE PRINCIPAL'S BEHALF BY A POWER OF ATTORNEY FOR HEALTH CARE; OR

(B) EXPRESSLY AUTHORIZED TO MAKE AN ANATOMICAL GIFT ON THE PRINCIPAL'S BEHALF BY ANY OTHER RECORD SIGNED BY THE PRINCIPAL.

3. "ANATOMICAL GIFT" MEANS A DONATION OF ALL OR PART OF A HUMAN BODY TO TAKE EFFECT AFTER THE DONOR'S DEATH FOR THE PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION.

4. "DECEDENT" MEANS A DECEASED INDIVIDUAL WHOSE BODY OR PART IS OR MAY BE THE SOURCE OF AN ANATOMICAL GIFT. THE TERM INCLUDES A STILLBORN INFANT AND A FETUS.

5. "DISINTERESTED WITNESS" MEANS A WITNESS OTHER THAN THE SPOUSE, CHILD, PARENT, SIBLING, GRANDCHILD, GRANDPARENT, OR GUARDIAN OF THE INDIVIDUAL WHO MAKES, AMENDS OR REVOKES AN ANATOMICAL GIFT, OR ANOTHER ADULT WHO EXHIBITED SPECIAL CARE AND CONCERN FOR THE INDIVIDUAL. THE TERM DOES NOT INCLUDE A PERSON TO WHICH AN ANATOMICAL GIFT COULD PASS UNDER SECTION FORTY-THREE HUNDRED EIGHT OF THIS ARTICLE.

6. "DOCUMENT OF GIFT" MEANS A DONOR CARD OR OTHER RECORD USED TO MAKE AN ANATOMICAL GIFT. THE TERM INCLUDES A STATEMENT OR SYMBOL ON A DRIVER'S LICENSE, IDENTIFICATION CARD, OR DONOR REGISTRY.

7. "DONOR" MEANS AN INDIVIDUAL WHOSE BODY OR PART IS THE SUBJECT OF AN ANATOMICAL GIFT.

8. "DONOR REGISTRY" MEANS A DATABASE THAT CONTAINS RECORDS OF ANATOMICAL GIFTS AND AMENDMENTS TO OR REVOCATIONS OF ANATOMICAL GIFTS.

9. "EYE BANK" MEANS A PERSON THAT IS LICENSED, ACCREDITED, OR REGULATED UNDER FEDERAL OR STATE LAW TO ENGAGE IN THE RECOVERY, SCREENING, TESTING, PROCESSING, STORAGE, OR DISTRIBUTION OF HUMAN EYES OR PORTIONS OF HUMAN EYES.

10. "GUARDIAN" MEANS A PERSON APPOINTED BY A COURT TO MAKE DECISIONS REGARDING THE SUPPORT, CARE, EDUCATION, HEALTH, OR WELFARE OF AN INDIVIDUAL. THE TERM DOES NOT INCLUDE A GUARDIAN AD LITEM.

11. "HOSPITAL" MEANS A HOSPITAL LICENSED, ACCREDITED, OR APPROVED UNDER THE LAWS OF ANY STATE AND INCLUDES A HOSPITAL OPERATED BY THE UNITED STATES GOVERNMENT, A STATE, OR A SUBDIVISION THEREOF, ALTHOUGH NOT REQUIRED TO BE LICENSED UNDER STATE LAWS.

12. "IDENTIFICATION CARD" MEANS AN IDENTIFICATION CARD ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES.

13. "MINOR" MEANS AN INDIVIDUAL WHO IS UNDER EIGHTEEN YEARS OF AGE.

14. "ORGAN PROCUREMENT ORGANIZATION" MEANS A PERSON DESIGNATED BY THE SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AS AN ORGAN PROCUREMENT ORGANIZATION.

15. "PARENT" MEANS A PARENT WHOSE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED.

16. "PART" OF A BODY MEANS AN ORGAN, AN EYE, OR TISSUE OF A HUMAN BEING. THE TERM DOES NOT INCLUDE THE WHOLE BODY, AND "PART" INCLUDES "PARTS".

17. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY OTHER LEGAL OR COMMERCIAL ENTITY.

18. "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED OR AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF ANY STATE.

19. "PROCUREMENT ORGANIZATION" MEANS AN EYE BANK, ORGAN PROCUREMENT ORGANIZATION, OR TISSUE BANK.

20. "PROSPECTIVE DONOR" MEANS AN INDIVIDUAL WHO IS DEAD OR NEAR DEATH AND HAS BEEN DETERMINED BY A PROCUREMENT ORGANIZATION TO HAVE A PART THAT COULD BE MEDICALLY SUITABLE FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION.

21. "REASONABLY AVAILABLE" MEANS ABLE TO BE CONTACTED BY A PROCUREMENT ORGANIZATION WITHOUT UNDUE EFFORT AND WILLING AND ABLE TO ACT IN A TIMELY MANNER CONSISTENT WITH EXISTING MEDICAL CRITERIA NECESSARY FOR THE MAKING OF AN ANATOMICAL GIFT.

22. "RECIPIENT" MEANS AN INDIVIDUAL INTO WHOSE BODY A DECEDENT'S PART HAS BEEN OR IS INTENDED TO BE TRANSPLANTED.

23. "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

24. "SIGN" MEANS, WITH THE PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD:

(A) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

(B) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

25. "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.

26. "TECHNICIAN" MEANS AN INDIVIDUAL DETERMINED TO BE QUALIFIED TO REMOVE OR PROCESS PARTS BY AN APPROPRIATE ORGANIZATION THAT IS LICENSED, ACCREDITED, OR REGULATED UNDER FEDERAL OR STATE LAW. THE TERM INCLUDES AN ENUCLEATOR.

27. "TISSUE" MEANS A PORTION OF THE HUMAN BODY OTHER THAN AN ORGAN OR AN EYE. THE TERM DOES NOT INCLUDE BLOOD UNLESS THE BLOOD IS DONATED FOR THE PURPOSE OF RESEARCH OR EDUCATION.

28. "TISSUE BANK" MEANS A PERSON THAT IS LICENSED, ACCREDITED, OR REGULATED UNDER FEDERAL OR STATE LAW TO ENGAGE IN THE RECOVERY, SCREENING, TESTING, PROCESSING, STORAGE, OR DISTRIBUTION OF TISSUE.

29. "TRANSPLANT HOSPITAL" MEANS A HOSPITAL THAT FURNISHES ORGAN TRANSPLANTS AND OTHER MEDICAL AND SURGICAL SPECIALTY SERVICES REQUIRED FOR THE CARE OF TRANSPLANT PATIENTS.

S 4301. APPLICATION. 1. THIS ARTICLE APPLIES TO AN ANATOMICAL GIFT OR AMENDMENT TO, REVOCATION OF, OR REFUSAL TO MAKE AN ANATOMICAL GIFT, WHENEVER MADE.

2. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE DEEMED TO SUPERSEDE OR AFFECT THE PROVISIONS OF THE PUBLIC HEALTH LAW RELATING TO THE FUNC-

TIONS, POWERS AND DUTIES OF CORONERS, CORONER'S PHYSICIANS OR MEDICAL EXAMINERS.

S 4302. PERSONS WHO MAY MAKE AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. PURSUANT TO SECTION FORTY-THREE HUNDRED FIVE OF THIS ARTICLE, AN ANATOMICAL GIFT OF A DONOR'S BODY OR PART MAY BE MADE DURING THE LIFE OF THE DONOR FOR THE PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION IN THE MANNER PROVIDED IN SECTION FORTY-THREE HUNDRED THREE OF THIS ARTICLE BY:

1. THE DONOR, IF THE DONOR IS AN ADULT OR IF THE DONOR IS A MINOR AND IS:

(A) EMANCIPATED; OR

(B) AUTHORIZED UNDER STATE LAW TO APPLY FOR A DRIVER'S LICENSE BECAUSE THE DONOR IS AT LEAST SIXTEEN YEARS OF AGE;

2. AN AGENT OF THE DONOR, UNLESS THE POWER OF ATTORNEY FOR HEALTH CARE OR OTHER RECORD PROHIBITS THE AGENT FROM MAKING AN ANATOMICAL GIFT;

3. A PARENT OF THE DONOR, IF THE DONOR IS AN UNEMANCIPATED MINOR; OR

4. THE DONOR'S GUARDIAN.

S 4303. MANNER OF MAKING AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. 1. A DONOR MAY MAKE AN ANATOMICAL GIFT:

(A) BY AUTHORIZING A STATEMENT OR SYMBOL INDICATING THAT THE DONOR HAS MADE AN ANATOMICAL GIFT TO BE IMPRINTED ON THE DONOR'S DRIVER'S LICENSE OR IDENTIFICATION CARD, PURSUANT TO SECTION FORTY-THREE HUNDRED SEVENTEEN OF THIS ARTICLE;

(B) IN A WILL;

(C) DURING A TERMINAL ILLNESS OR INJURY OF THE DONOR, BY ANY FORM OF COMMUNICATION ADDRESSED TO AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS; OR

(D) AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION.

2. A DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER SECTION FORTY-THREE HUNDRED TWO OF THIS ARTICLE MAY MAKE A GIFT BY A DONOR CARD OR OTHER RECORD SIGNED BY THE DONOR OR OTHER PERSON MAKING THE GIFT OR BY AUTHORIZING THAT A STATEMENT OR SYMBOL INDICATING THAT THE DONOR HAS MADE AN ANATOMICAL GIFT BE INCLUDED ON A DONOR REGISTRY. IF THE DONOR OR OTHER PERSON IS PHYSICALLY UNABLE TO SIGN A RECORD, THE RECORD MAY BE SIGNED BY ANOTHER INDIVIDUAL AT THE DIRECTION OF THE DONOR OR OTHER PERSON AND SHALL:

(A) BE WITNESSED BY AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS, WHO HAVE SIGNED AT THE REQUEST OF THE DONOR OR THE OTHER PERSON; AND

(B) STATE THAT IT HAS BEEN SIGNED AND WITNESSED AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION.

3. REVOCATION, SUSPENSION, EXPIRATION, OR CANCELLATION OF A DRIVER'S LICENSE OR IDENTIFICATION CARD UPON WHICH AN ANATOMICAL GIFT IS INDICATED DOES NOT INVALIDATE THE GIFT.

4. AN ANATOMICAL GIFT MADE BY WILL TAKES EFFECT UPON THE DONOR'S DEATH WHETHER OR NOT THE WILL IS PROBATED. INVALIDATION OF THE WILL AFTER THE DONOR'S DEATH DOES NOT INVALIDATE THE GIFT.

S 4304. AMENDING OR REVOKING AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. 1. PURSUANT TO SECTION FORTY-THREE HUNDRED FIVE OF THIS ARTICLE, A DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER SECTION FORTY-THREE HUNDRED TWO OF THIS ARTICLE MAY AMEND OR REVOKE AN ANATOMICAL GIFT BY:

(A) A RECORD SIGNED BY:

(1) THE DONOR;

(2) THE OTHER PERSON; OR

(3) SUBJECT TO SUBDIVISION TWO OF THIS SECTION, ANOTHER INDIVIDUAL ACTING AT THE DIRECTION OF THE DONOR OR THE OTHER PERSON IF THE DONOR OR OTHER PERSON IS PHYSICALLY UNABLE TO SIGN; OR

(B) A LATER-EXECUTED DOCUMENT OF GIFT THAT AMENDS OR REVOKES A PREVIOUS ANATOMICAL GIFT OR PORTION OF AN ANATOMICAL GIFT, EITHER EXPRESSLY OR BY INCONSISTENCY.

2. A RECORD SIGNED PURSUANT TO SUBPARAGRAPH THREE OF PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION SHALL:

(A) BE WITNESSED BY AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS, WHO HAVE SIGNED AT THE REQUEST OF THE DONOR OR THE OTHER PERSON; AND

(B) STATE THAT IT HAS BEEN SIGNED AND WITNESSED AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION.

3. PURSUANT TO SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE, A DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER SECTION FORTY-THREE HUNDRED TWO OF THIS ARTICLE MAY REVOKE AN ANATOMICAL GIFT BY THE DESTRUCTION OR CANCELLATION OF THE DOCUMENT OF GIFT, OR THE PORTION OF THE DOCUMENT OF GIFT USED TO MAKE THE GIFT, WITH THE INTENT TO REVOKE THE GIFT.

4. A DONOR MAY AMEND OR REVOKE AN ANATOMICAL GIFT THAT WAS NOT MADE IN A WILL BY ANY FORM OF COMMUNICATION DURING A TERMINAL ILLNESS OR INJURY ADDRESSED TO AT LEAST TWO ADULTS, AT LEAST ONE OF WHOM IS A DISINTERESTED WITNESS.

5. A DONOR WHO MAKES AN ANATOMICAL GIFT IN A WILL MAY AMEND OR REVOKE THE GIFT IN THE MANNER PROVIDED FOR AMENDMENT OR REVOCATION OF WILLS OR AS PROVIDED IN SUBDIVISION ONE OF THIS SECTION.

S 4305. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT OR REVOCATION. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION SEVEN OF THIS SECTION AND SUBJECT TO SUBDIVISION SIX OF THIS SECTION, IN THE ABSENCE OF AN EXPRESS, CONTRARY INDICATION BY THE DONOR, A PERSON OTHER THAN THE DONOR IS BARRED FROM MAKING, AMENDING, OR REVOKING AN ANATOMICAL GIFT OF A DONOR'S BODY OR PART IF THE DONOR MADE AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER SECTION FORTY-THREE HUNDRED THREE OF THIS ARTICLE OR AN AMENDMENT TO AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER SECTION FORTY-THREE HUNDRED FOUR OF THIS ARTICLE.

2. A DONOR'S REVOCATION OF AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER SECTION FORTY-THREE HUNDRED FOUR OF THIS ARTICLE IS NOT A REFUSAL AND SHALL NOT BAR ANOTHER PERSON SPECIFIED IN SECTION FORTY-THREE HUNDRED TWO OR SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE FROM MAKING AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

3. IF A PERSON OTHER THAN THE DONOR MAKES AN UNREVOKED ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER SECTION FORTY-THREE HUNDRED THREE OF THIS ARTICLE OR AN AMENDMENT TO AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART UNDER SECTION FORTY-THREE HUNDRED FOUR OF THIS ARTICLE, ANOTHER PERSON MAY NOT MAKE, AMEND, OR REVOKE THE GIFT OF THE DONOR'S BODY OR PART UNDER SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE.

4. A REVOCATION OF AN ANATOMICAL GIFT OF A DONOR'S BODY OR PART UNDER SECTION FORTY-THREE HUNDRED FOUR OF THIS ARTICLE BY A PERSON OTHER THAN THE DONOR SHALL NOT BAR ANOTHER PERSON FROM MAKING AN ANATOMICAL GIFT OF THE BODY OR PART UNDER SECTION FORTY-THREE HUNDRED THREE OR SECTION FORTY-THREE HUNDRED SEVEN OF THIS ARTICLE.

5. IN THE ABSENCE OF AN EXPRESS, CONTRARY INDICATION BY THE DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER SECTION FORTY-THREE HUNDRED TWO OF THIS ARTICLE, AN ANATOMICAL GIFT OF A PART IS NEITHER A REFUSAL TO GIVE ANOTHER PART NOR A LIMITATION ON THE MAKING OF

AN ANATOMICAL GIFT OF ANOTHER PART AT A LATER TIME BY THE DONOR OR ANOTHER PERSON.

6. IN THE ABSENCE OF AN EXPRESS, CONTRARY INDICATION BY THE DONOR OR OTHER PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER SECTION FORTY-THREE HUNDRED TWO OF THIS ARTICLE, AN ANATOMICAL GIFT OF A PART FOR ONE OR MORE OF THE PURPOSES SET FORTH IN SUCH SECTION IS NOT A LIMITATION ON THE MAKING OF AN ANATOMICAL GIFT OF THE PART FOR ANY OF THE OTHER PURPOSES BY THE DONOR OR ANY OTHER PERSON UNDER SECTION FORTY-THREE HUNDRED THREE OR FORTY-THREE HUNDRED SEVEN OF THIS ARTICLE.

7. IF A DONOR WHO IS AN UNEMANCIPATED MINOR DIES, A PARENT OF THE DONOR, WHO IS REASONABLY AVAILABLE, MAY REVOKE OR AMEND AN ANATOMICAL GIFT OF THE DONOR'S BODY OR PART.

8. IF AN UNEMANCIPATED MINOR WHO SIGNED A REFUSAL DIES, A PARENT OF THE MINOR WHO IS REASONABLY AVAILABLE MAY REVOKE THE MINOR'S REFUSAL.

S 4306. PERSONS WHO MAKE AN ANATOMICAL GIFT OF A DECEDENT'S BODY OR PART. 1. SUBJECT TO SUBDIVISIONS TWO AND THREE OF THIS SECTION AND UNLESS BARRED BY SECTION FORTY-THREE HUNDRED FIVE OF THIS ARTICLE, AN ANATOMICAL GIFT OF A DECEDENT'S BODY OR PART FOR PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION MAY BE MADE BY ANY MEMBER OF THE FOLLOWING CLASSES OF PERSONS WHO IS REASONABLY AVAILABLE, IN THE ORDER OF PRIORITY LISTED:

(A) AN AGENT OF THE DECEDENT AT THE TIME OF DEATH WHO COULD HAVE MADE AN ANATOMICAL GIFT UNDER SUBDIVISION TWO OF SECTION FORTY-THREE HUNDRED TWO OF THIS ARTICLE IMMEDIATELY BEFORE THE DECEDENT'S DEATH;

(B) THE SPOUSE OR DOMESTIC PARTNER OF THE DECEDENT. FOR PURPOSES OF THIS ARTICLE, DOMESTIC PARTNER SHALL BE DEFINED TO BE A PERSON WHO SATISFIES THE REQUIREMENTS CONTAINED IN SECTION FORTY-TWO HUNDRED ONE OF THIS CHAPTER;

(C) ADULT CHILDREN OF THE DECEDENT;

(D) PARENTS OF THE DECEDENT;

(E) ADULT SIBLINGS OF THE DECEDENT;

(F) ADULT GRANDCHILDREN OF THE DECEDENT;

(G) GRANDPARENTS OF THE DECEDENT;

(H) AN ADULT WHO EXHIBITED SPECIAL CARE AND CONCERN FOR THE DECEDENT;

(I) THE PERSONS WHO WERE ACTING AS THE GUARDIAN OF THE DECEDENT AT THE TIME OF DEATH; AND

(J) ANY OTHER PERSON HAVING THE AUTHORITY TO DISPOSE OF THE DECEDENT'S BODY, INCLUDING A PERSON NAMED IN A DECEDENT'S WILL, A COMMISSIONER OF A LOCAL SOCIAL SERVICES DISTRICT, A CORONER, A MEDICAL EXAMINER, OR A HOSPITAL ADMINISTRATOR.

2. IF THERE IS MORE THAN ONE MEMBER OF A CLASS LISTED IN PARAGRAPH (A), (C), (D), (E), (F), (G) OR (I) OF SUBDIVISION ONE OF THIS SECTION ENTITLED TO MAKE AN ANATOMICAL GIFT, AN ANATOMICAL GIFT MAY BE MADE BY A MEMBER OF THE CLASS UNLESS THAT MEMBER, OR A PERSON TO WHICH THE GIFT MAY PASS UNDER SECTION FORTY-THREE HUNDRED EIGHT OF THIS ARTICLE, KNOWS OF AN OBJECTION BY ANOTHER MEMBER OF THE CLASS. IF AN OBJECTION IS KNOWN, THE GIFT MAY BE MADE ONLY BY A MAJORITY OF THE MEMBERS OF THE CLASS WHO ARE REASONABLY AVAILABLE.

3. A PERSON MAY NOT MAKE AN ANATOMICAL GIFT IF, AT THE TIME OF THE DECEDENT'S DEATH, A PERSON IN A PRIOR CLASS UNDER SUBDIVISION ONE IS REASONABLY AVAILABLE TO MAKE OR TO OBJECT TO THE MAKING OF AN ANATOMICAL GIFT.

4. A PERSON MAY NOT MAKE AN ANATOMICAL GIFT IF THE PERSON KNOWS OF A RECORD OF THE DECEDENT'S CONTRARY INDICATION OR IF THE DECEDENT IS KNOWN TO HAVE MORAL OR RELIGIOUS OBJECTIONS TO THE MAKING OF AN ANATOMICAL GIFT.

S 4307. MANNER OF MAKING, AMENDING OR REVOKING AN ANATOMICAL GIFT OF A DECEDENT'S BODY OR PART. 1. A PERSON AUTHORIZED TO MAKE AN ANATOMICAL GIFT UNDER SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE MAY MAKE AN ANATOMICAL GIFT BY A DOCUMENT OF GIFT SIGNED BY THE PERSON MAKING THE GIFT OR BY THAT PERSON'S ORAL COMMUNICATION THAT IS ELECTRONICALLY RECORDED OR IS CONTEMPORANEOUSLY REDUCED TO A RECORD AND SIGNED BY THE INDIVIDUAL RECEIVING THE ORAL COMMUNICATION.

2. SUBJECT TO SUBDIVISION THREE OF THIS SECTION, AN ANATOMICAL GIFT BY A PERSON AUTHORIZED UNDER SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE MAY BE AMENDED OR REVOKED ORALLY OR IN A RECORD BY ANY MEMBER OF A PRIOR CLASS WHO IS REASONABLY AVAILABLE. IF MORE THAN ONE MEMBER OF THE PRIOR CLASS IS REASONABLY AVAILABLE, THE GIFT MADE BY A PERSON AUTHORIZED UNDER SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE MAY BE:

(A) AMENDED ONLY IF A MAJORITY OF THE REASONABLY AVAILABLE MEMBERS AGREE TO THE AMENDING OF THE GIFT; OR

(B) REVOKED ONLY IF A MAJORITY OF THE REASONABLY AVAILABLE MEMBERS AGREE TO THE REVOKING OF THE GIFT OR IF THEY ARE EQUALLY DIVIDED AS TO WHETHER TO REVOKE THE GIFT.

3. A REVOCATION UNDER SUBDIVISION TWO OF THIS SECTION IS EFFECTIVE ONLY IF, BEFORE AN INCISION HAS BEEN MADE TO REMOVE A PART FROM THE DONOR'S BODY OR BEFORE INVASIVE PROCEDURES HAVE BEGUN TO PREPARE THE RECIPIENT, THE PROCUREMENT ORGANIZATION, TRANSPLANT HOSPITAL, OR PHYSICIAN OR TECHNICIAN KNOWS OF THE REVOCATION.

S 4308. PERSONS WHO MAY RECEIVE AN ANATOMICAL GIFT; PURPOSE OF AN ANATOMICAL GIFT. 1. AN ANATOMICAL GIFT MAY BE MADE TO THE FOLLOWING PERSONS NAMED IN THE DOCUMENT OF GIFT:

(A) A HOSPITAL; ACCREDITED MEDICAL SCHOOL, DENTAL SCHOOL, COLLEGE, OR UNIVERSITY; ORGAN PROCUREMENT ORGANIZATION; OR OTHER APPROPRIATE PERSON, FOR RESEARCH OR EDUCATION;

(B) SUBJECT TO SUBDIVISION TWO OF THIS SECTION, AN INDIVIDUAL DESIGNATED BY THE PERSON MAKING THE ANATOMICAL GIFT IF THE INDIVIDUAL IS THE RECIPIENT OF THE PART;

(C) AN EYE BANK OR TISSUE BANK.

2. IF AN ANATOMICAL GIFT TO AN INDIVIDUAL UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION SHALL NOT BE TRANSPLANTED INTO THE INDIVIDUAL, THE PART PASSES IN ACCORDANCE WITH SUBDIVISION SEVEN OF THIS SECTION IN THE ABSENCE OF AN EXPRESS, CONTRARY RECORD BY THE PERSON MAKING THE ANATOMICAL GIFT.

3. IF AN ANATOMICAL GIFT OF ONE OR MORE SPECIFIC PARTS OR OF ALL PARTS IS MADE IN A DOCUMENT OF GIFT THAT DOES NOT NAME A PERSON DESCRIBED IN SUBDIVISION ONE OF THIS SECTION BUT IDENTIFIES THE PURPOSE FOR WHICH AN ANATOMICAL GIFT MAY BE USED, THE FOLLOWING RULES APPLY:

(A) IF THE PART IS AN EYE AND THE GIFT IS FOR THE PURPOSE OF TRANSPLANTATION OR THERAPY, THE GIFT PASSES TO THE APPROPRIATE EYE BANK.

(B) IF THE PART IS TISSUE AND THE GIFT IS FOR THE PURPOSE OF TRANSPLANTATION OR THERAPY, THE GIFT PASSES TO THE APPROPRIATE TISSUE BANK.

(C) IF THE PART IS AN ORGAN AND THE GIFT IS FOR THE PURPOSE OF TRANSPLANTATION OR THERAPY, THE GIFT PASSES TO THE APPROPRIATE ORGAN PROCUREMENT ORGANIZATION AS CUSTODIAN OF THE ORGAN.

(D) IF THE PART IS AN ORGAN, AN EYE, OR TISSUE AND THE GIFT IS FOR THE PURPOSE OF RESEARCH OR EDUCATION, THE GIFT PASSES TO THE APPROPRIATE PROCUREMENT ORGANIZATION.

4. FOR THE PURPOSES OF SUBDIVISION THREE OF THIS SECTION, IF THERE IS MORE THAN ONE PURPOSE OF AN ANATOMICAL GIFT SET FORTH IN THE DOCUMENT OF GIFT BUT THE PURPOSES ARE NOT SET FORTH IN ANY PRIORITY, THE GIFT SHALL BE USED FOR TRANSPLANTATION OR THERAPY, IF SUITABLE. IF THE GIFT CANNOT

BE USED FOR TRANSPLANTATION OR THERAPY, THE GIFT MAY BE USED FOR RESEARCH OR EDUCATION.

5. IF AN ANATOMICAL GIFT OF ONE OR MORE SPECIFIC PARTS IS MADE IN A DOCUMENT OF GIFT THAT DOES NOT NAME A PERSON DESCRIBED IN SUBDIVISION ONE OF THIS SECTION AND DOES NOT IDENTIFY THE PURPOSE OF THE GIFT, THE GIFT MAY BE USED ONLY FOR TRANSPLANTATION OR THERAPY, AND THE GIFT PASSES IN ACCORDANCE WITH SUBDIVISION SEVEN OF THIS SECTION.

6. IF A DOCUMENT OF GIFT SPECIFIES ONLY A GENERAL INTENT TO MAKE AN ANATOMICAL GIFT BY WORDS SUCH AS "DONOR", "ORGAN DONOR", OR "BODY DONOR", OR BY A SYMBOL OR STATEMENT OF SIMILAR IMPORT, THE GIFT MAY BE USED ONLY FOR TRANSPLANTATION OR THERAPY, AND THE GIFT PASSES IN ACCORDANCE WITH SUBDIVISION SEVEN OF THIS SECTION.

7. FOR PURPOSES OF SUBDIVISIONS TWO, FIVE AND SIX OF THIS SECTION THE FOLLOWING RULES SHALL APPLY:

(A) IF THE PART IS AN EYE, THE GIFT PASSES TO THE APPROPRIATE EYE BANK.

(B) IF THE PART IS TISSUE, THE GIFT PASSES TO THE APPROPRIATE TISSUE BANK.

(C) IF THE PART IS AN ORGAN, THE GIFT PASSES TO THE APPROPRIATE ORGAN PROCUREMENT ORGANIZATION AS CUSTODIAN OF THE ORGAN.

8. AN ANATOMICAL GIFT OF AN ORGAN FOR TRANSPLANTATION OR THERAPY, OTHER THAN AN ANATOMICAL GIFT UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION, PASSES TO THE ORGAN PROCUREMENT ORGANIZATION AS CUSTODIAN OF THE ORGAN.

9. IF AN ANATOMICAL GIFT DOES NOT PASS PURSUANT TO SUBDIVISIONS ONE THROUGH EIGHT OF THIS SECTION OR THE DECEDENT'S BODY OR PART IS NOT USED FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION, CUSTODY OF THE BODY OR PART PASSES TO THE PERSON UNDER OBLIGATION TO DISPOSE OF THE BODY OR PART.

10. A PERSON MAY NOT ACCEPT AN ANATOMICAL GIFT IF THE PERSON KNOWS THAT THE GIFT WAS NOT EFFECTIVELY MADE UNDER SECTION FORTY-THREE HUNDRED THREE OR FORTY-THREE HUNDRED SEVEN OF THIS ARTICLE. FOR PURPOSES OF THIS SUBDIVISION, IF A PERSON KNOWS THAT AN ANATOMICAL GIFT WAS MADE ON A DOCUMENT OF GIFT, THE PERSON IS DEEMED TO KNOW OF ANY AMENDMENT OR REVOCATION OF THE GIFT OR ANY REFUSAL TO MAKE AN ANATOMICAL GIFT ON THE SAME DOCUMENT OF GIFT.

11. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION, NOTHING IN THIS ARTICLE AFFECTS THE ALLOCATION OF ORGANS FOR TRANSPLANTATION OR THERAPY.

S 4309. SEARCH AND NOTIFICATION. 1. AT THE REQUEST OF AN ORGAN PROCUREMENT ORGANIZATION, THE FOLLOWING PERSONS SHALL MAKE A REASONABLE SEARCH OF AN INDIVIDUAL WHO THE PERSON REASONABLY BELIEVES IS DEAD OR NEAR DEATH FOR A DOCUMENT OF GIFT OR OTHER INFORMATION IDENTIFYING THE INDIVIDUAL AS A DONOR:

(A) A LAW ENFORCEMENT OFFICER, FIREFIGHTER, PARAMEDIC, OR OTHER EMERGENCY RESCUER FINDING THE INDIVIDUAL; AND

(B) IF NO OTHER SOURCE OF THE INFORMATION IS IMMEDIATELY AVAILABLE, A HOSPITAL, AS SOON AS PRACTICAL AFTER THE INDIVIDUAL'S ARRIVAL AT THE HOSPITAL.

2. IF A DOCUMENT OF GIFT IS LOCATED BY THE SEARCH REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION AND THE INDIVIDUAL OR DECEASED INDIVIDUAL TO WHOM IT RELATES IS TAKEN TO A HOSPITAL, THE PERSON RESPONSIBLE FOR CONDUCTING THE SEARCH SHALL SEND THE DOCUMENT OF GIFT TO THE HOSPITAL.

3. A PERSON IS NOT SUBJECT TO CRIMINAL OR CIVIL LIABILITY FOR FAILING TO DISCHARGE THE DUTIES IMPOSED BY THIS SECTION.

S 4310. DELIVERY OF DOCUMENT OF GIFT; RIGHT TO EXAMINE. 1. A DOCUMENT OF GIFT NEED NOT BE DELIVERED DURING THE DONOR'S LIFETIME TO BE EFFECTIVE.

2. UPON OR AFTER AN INDIVIDUAL'S DEATH, A PERSON IN POSSESSION OF A DOCUMENT OF GIFT WITH RESPECT TO THE INDIVIDUAL SHALL ALLOW EXAMINATION AND COPYING OF THE DOCUMENT OF GIFT BY A PERSON AUTHORIZED TO MAKE OR OBJECT TO THE MAKING OF AN ANATOMICAL GIFT WITH RESPECT TO THE INDIVIDUAL OR BY A PERSON TO WHICH THE GIFT MAY PASS UNDER SECTION FORTY-THREE HUNDRED EIGHT OF THIS ARTICLE.

S 4311. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS. 1. (A) WHEN THE DEATH OF A PERSON IN A HOSPITAL HAS OCCURRED OR IS IMMINENT, THE HOSPITAL SHALL CONTACT THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION IN ORDER TO MAKE A PRELIMINARY DETERMINATION OF THE SUITABILITY OF THE PERSON FOR ORGAN DONATION, EXCEPT WHERE NOT REQUIRED BY PARAGRAPH (C) OF THIS SUBDIVISION.

(B) WHERE CONTACT WITH THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION IS NOT REQUIRED UNDER CRITERIA DEVELOPED BY THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION THE HOSPITAL SHALL CONTACT THE APPROPRIATE EYE BANK OR TISSUE BANK, EXCEPT WHERE NOT REQUIRED BY PARAGRAPH (C) OF THIS SUBDIVISION.

(C) THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION, IN CONSULTATION WITH THE TISSUE PROCUREMENT PROVIDERS, MAY ISSUE CRITERIA UNDER WHICH A HOSPITAL SHALL NOT BE REQUIRED TO MAKE THE CONTACT UNDER THIS SUBDIVISION.

(D) ALL HOSPITALS SHALL SELECT AT LEAST ONE EYE BANK OR TISSUE BANK FOR THE PROCUREMENT OF TISSUE, AS DEFINED IN SECTION FORTY-THREE HUNDRED SIXTY OF THIS CHAPTER. A HOSPITAL SHALL NOTIFY THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION OF ITS CHOICE OF TISSUE PROCUREMENT PROVIDERS. IF A HOSPITAL SELECTS MORE THAN ONE EYE BANK OR TISSUE BANK AS A PROCUREMENT PROVIDER, IT MAY SPECIFY A ROTATION OF REFERRALS FOR PURPOSES OF TISSUE PROCUREMENT.

(E) WHERE THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION, EYE BANK OR TISSUE BANK IS CONTACTED, IT SHALL, IN CONSULTATION WITH THE HOSPITAL, AFTER APPROPRIATE MEDICAL SCREENING (WHICH MAY INCLUDE SEROLOGICAL TESTING IF APPLICABLE) DETERMINE SUITABILITY FOR ORGAN, EYE AND TISSUE DONATION, AS APPROPRIATE. WHERE A FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION IS CONTACTED, IT SHALL CONTACT THE APPROPRIATE EYE BANK OR TISSUE BANK WITH RESPECT TO SUITABILITY FOR EYE OR TISSUE DONATION.

(F) IF THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION, EYE BANK OR TISSUE BANK DETERMINES THAT ORGAN, EYE OR TISSUE DONATION, RESPECTIVELY, IS NOT APPROPRIATE BASED ON ESTABLISHED MEDICAL CRITERIA, THIS SHALL BE NOTED BY HOSPITAL PERSONNEL ON THE PATIENT'S RECORD, AND NO FURTHER ACTION WITH RESPECT TO ORGAN, EYE OR TISSUE DONATION, RESPECTIVELY, IS NECESSARY.

(G) THE PERSON INITIATING THE REQUEST SHALL BE DESIGNATED BY A HOSPITAL AND SHALL BE A REPRESENTATIVE OF A FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION, EYE BANK, TISSUE BANK, OR A DESIGNATED REQUESTOR. AS USED IN THIS SECTION A "DESIGNATED REQUESTOR" SHALL MEAN A PERSON WHO HAS COMPLETED A COURSE PROVIDED BY A FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION, EYE BANK OR TISSUE BANK, WHICHEVER IS APPLICABLE, ON HOW TO APPROACH POTENTIAL DONOR FAMILIES AND REQUEST ORGAN, EYE, OR TISSUE DONATION.

(H) ANY EMPLOYEE OR AGENT OF A FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION, EYE BANK OR TISSUE BANK ACTING PURSUANT TO THIS SECTION

SHALL BE HELD TO THE SAME STANDARD OF CONFIDENTIALITY AS THAT IMPOSED ON EMPLOYEES OF THE HOSPITAL.

2. (A) WHEN A HOSPITAL REFERS AN INDIVIDUAL AT OR NEAR DEATH TO A PROCUREMENT ORGANIZATION, THE ORGANIZATION SHALL MAKE A REASONABLE SEARCH OF THE RECORDS PURSUANT TO SECTION FORTY-THREE HUNDRED SEVENTEEN OF THIS ARTICLE AND ANY DONOR REGISTRY THAT IT KNOWS EXISTS FOR THE GEOGRAPHICAL AREA IN WHICH THE INDIVIDUAL RESIDES TO ASCERTAIN WHETHER THE INDIVIDUAL HAS MADE AN ANATOMICAL GIFT.

(B) A PROCUREMENT ORGANIZATION SHALL BE ALLOWED REASONABLE ACCESS TO INFORMATION IN THE RECORDS OF THE DEPARTMENT, PURSUANT TO SECTION FORTY-THREE HUNDRED SEVENTEEN OF THIS ARTICLE TO ASCERTAIN WHETHER AN INDIVIDUAL AT OR NEAR DEATH IS A DONOR.

(C) WHEN A HOSPITAL REFERS AN INDIVIDUAL AT OR NEAR DEATH TO A PROCUREMENT ORGANIZATION, THE ORGANIZATION MAY CONDUCT ANY REASONABLE EXAMINATION NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF A PART THAT IS OR MAY BE THE SUBJECT OF AN ANATOMICAL GIFT FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION FROM A DONOR OR A PROSPECTIVE DONOR. DURING THE EXAMINATION PERIOD, MEASURES NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF THE PART MAY NOT BE WITHDRAWN UNLESS THE HOSPITAL OR PROCUREMENT ORGANIZATION KNOWS THAT THE INDIVIDUAL EXPRESSED A CONTRARY INTENT.

(D) UNLESS PROHIBITED BY LAW OTHER THAN THIS ARTICLE, AT ANY TIME AFTER A DONOR'S DEATH, THE PERSON TO WHICH A PART PASSES UNDER SECTION FORTY-THREE HUNDRED EIGHT OF THIS ARTICLE MAY CONDUCT ANY REASONABLE EXAMINATION NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF THE BODY OR PART FOR ITS INTENDED PURPOSE.

(E) UNLESS PROHIBITED BY LAW OTHER THAN THIS ARTICLE, AN EXAMINATION UNDER SECTION FORTY-THREE HUNDRED TEN OF THIS ARTICLE MAY INCLUDE AN EXAMINATION OF ALL MEDICAL AND DENTAL RECORDS OF THE DONOR OR PROSPECTIVE DONOR.

(F) UPON THE DEATH OF A MINOR WHO WAS A DONOR, UNLESS A PROCUREMENT ORGANIZATION KNOWS THE MINOR IS EMANCIPATED, THE PROCUREMENT ORGANIZATION SHALL CONDUCT A REASONABLE SEARCH FOR THE PARENTS OF THE MINOR AND PROVIDE THE PARENTS WITH AN OPPORTUNITY TO REVOKE OR AMEND THE ANATOMICAL GIFT.

(G) UPON REFERRAL BY A HOSPITAL UNDER SUBDIVISION ONE OF THIS SECTION, A PROCUREMENT ORGANIZATION SHALL MAKE A REASONABLE SEARCH FOR ANY PERSON LISTED IN SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE HAVING PRIORITY TO MAKE AN ANATOMICAL GIFT ON BEHALF OF A PROSPECTIVE DONOR. IF A PROCUREMENT ORGANIZATION RECEIVES INFORMATION THAT AN ANATOMICAL GIFT TO ANY OTHER PERSON WAS MADE, AMENDED, OR REVOKED, IT SHALL PROMPTLY ADVISE THE OTHER PERSON OF ALL RELEVANT INFORMATION.

(H) SUBJECT TO SECTION FORTY-THREE HUNDRED EIGHT OF THIS ARTICLE, THE RIGHTS OF THE PERSON TO WHICH A PART PASSES UNDER SUCH SECTION ARE SUPERIOR TO THE RIGHTS OF ALL OTHERS WITH RESPECT TO THE PART. THE PERSON MAY ACCEPT OR REJECT AN ANATOMICAL GIFT IN WHOLE OR IN PART. SUBJECT TO THE TERMS OF THE DOCUMENT OF GIFT AND THIS ARTICLE, A PERSON THAT ACCEPTS AN ANATOMICAL GIFT OF AN ENTIRE BODY MAY ALLOW EMBALMING, BURIAL OR CREMATION, AND USE OF REMAINS IN A FUNERAL SERVICE. IF THE GIFT IS OF A PART, THE PERSON TO WHICH THE PART PASSES UNDER SECTION FORTY-THREE HUNDRED EIGHT OF THIS ARTICLE, UPON THE DEATH OF THE DONOR AND BEFORE EMBALMING, BURIAL, OR CREMATION, SHALL CAUSE THE PART TO BE REMOVED WITHOUT UNNECESSARY MUTILATION.

(I) NEITHER THE PHYSICIAN WHO ATTENDS THE DECEDENT AT DEATH NOR THE PHYSICIAN WHO DETERMINES THE TIME OF THE DECEDENT'S DEATH MAY PARTIC-

IPATE IN THE PROCEDURES FOR REMOVING OR TRANSPLANTING A PART FROM THE DECEDENT.

(J) A PHYSICIAN OR TECHNICIAN MAY REMOVE A DONATED PART FROM THE BODY OF A DONOR THAT THE PHYSICIAN OR TECHNICIAN IS QUALIFIED TO REMOVE.

S 4312. COORDINATION OF PROCUREMENT AND USE. EACH HOSPITAL IN THIS STATE SHALL ENTER INTO AGREEMENTS OR AFFILIATIONS WITH PROCUREMENT ORGANIZATIONS FOR COORDINATION OF PROCUREMENT AND USE OF ANATOMICAL GIFTS.

S 4313. SALE OR PURCHASE OF PARTS PROHIBITED. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS SECTION, A PERSON THAT FOR VALUABLE CONSIDERATION, KNOWINGLY PURCHASES OR SELLS A PART FOR TRANSPLANTATION OR THERAPY IF REMOVAL OF A PART FROM AN INDIVIDUAL IS INTENDED TO OCCUR AFTER THE INDIVIDUAL'S DEATH SHALL BE GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING FIFTY THOUSAND DOLLARS OR IMPRISONMENT NOT EXCEEDING FIVE YEARS, OR BOTH.

2. A PERSON MAY CHARGE A REASONABLE AMOUNT FOR THE REMOVAL, PROCESSING, PRESERVATION, QUALITY CONTROL, STORAGE, TRANSPORTATION, IMPLANTATION, OR DISPOSAL OF A PART.

S 4314. OTHER PROHIBITED ACTS. A PERSON THAT, IN ORDER TO OBTAIN A FINANCIAL GAIN, INTENTIONALLY FALSIFIES, FORGES, CONCEALS, DEFACES, OR OBLITERATES A DOCUMENT OF GIFT, AN AMENDMENT OR REVOCATION OF A DOCUMENT OF GIFT SHALL BE GUILTY OF A FELONY AND UPON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING FIFTY THOUSAND DOLLARS OR IMPRISONMENT NOT EXCEEDING FIVE YEARS, OR BOTH.

S 4315. IMMUNITY. 1. A PERSON THAT ACTS IN ACCORDANCE WITH THIS ARTICLE OR WITH THE APPLICABLE ANATOMICAL GIFT LAW OF ANOTHER STATE, OR ATTEMPTS IN GOOD FAITH TO DO SO, IS NOT LIABLE FOR THE ACT IN A CIVIL ACTION, CRIMINAL PROSECUTION, OR ADMINISTRATIVE PROCEEDING. FOR THE PURPOSE OF ANY PROCEEDING, CIVIL, CRIMINAL OR ADMINISTRATIVE, THE GOOD FAITH OF ANY SUCH PERSON SHALL BE PRESUMED, PROVIDED SUCH PERSON, OFFICIAL OR INSTITUTION WAS ACTING IN DISCHARGE OF THEIR DUTIES AND WITHIN THE SCOPE OF THEIR EMPLOYMENT.

2. NEITHER THE PERSON MAKING AN ANATOMICAL GIFT NOR THE DONOR'S ESTATE IS LIABLE FOR ANY INJURY OR DAMAGE THAT RESULTS FROM THE MAKING OR USE OF THE GIFT.

3. IN DETERMINING WHETHER AN ANATOMICAL GIFT HAS BEEN MADE, AMENDED, OR REVOKED UNDER THIS ARTICLE, A PERSON MAY RELY UPON REPRESENTATIONS OF AN INDIVIDUAL LISTED IN PARAGRAPH (B), (C), (D), (E), (F), (G) OR (H) OF SUBDIVISION ONE OF SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE RELATING TO THE INDIVIDUAL'S RELATIONSHIP TO THE DONOR OR PROSPECTIVE DONOR UNLESS THE PERSON KNOWS THAT THE REPRESENTATION IS UNTRUE.

4. NO PHYSICIAN, HOSPITAL OR OTHER HEALTH CARE PROVIDER MAY CHARGE THE DONOR'S ESTATE, FAMILY OR INSURER FOR ANY COST INCURRED IN TESTING OR REMOVING A HUMAN ORGAN OR TISSUE FROM A DONOR AND SUCH CHARGE SHALL BE VOID AND UNENFORCEABLE.

S 4316. LAW GOVERNING VALIDITY. 1. A DOCUMENT OF GIFT IS VALID IF EXECUTED IN ACCORDANCE WITH:

(A) THIS ARTICLE;

(B) THE LAWS OF THE STATE OR COUNTRY WHERE IT WAS EXECUTED; OR

(C) THE LAWS OF THE STATE OR COUNTRY WHERE THE PERSON MAKING THE ANATOMICAL GIFT WAS DOMICILED, HAS A PLACE OF RESIDENCE, OR WAS A NATIONAL AT THE TIME THE DOCUMENT OF GIFT WAS EXECUTED.

2. IF A DOCUMENT OF GIFT IS VALID UNDER THIS SECTION, THE LAW OF THIS STATE GOVERNS THE INTERPRETATION OF THE DOCUMENT OF GIFT.

3. A PERSON MAY PRESUME THAT A DOCUMENT OF GIFT OR AMENDMENT OF AN ANATOMICAL GIFT IS VALID UNLESS THAT PERSON KNOWS THAT IT WAS NOT VALIDLY EXECUTED OR WAS REVOKED.

S 4317. NEW YORK STATE DONATE LIFE REGISTRY. 1. THE DEPARTMENT SHALL MAINTAIN AN ORGAN AND TISSUE DONOR REGISTRY, WHICH SHALL BE REFERRED TO AS THE NEW YORK DONATE LIFE REGISTRY AND SHALL CONTAIN A STATEMENT OR SYMBOL THAT THE DONOR HAS MADE OR AMENDED AN ANATOMICAL GIFT.

2. SUCH REGISTRATION OF ANATOMICAL GIFTS CAN BE MADE THROUGH:

(A) A STATEMENT OR SYMBOL MADE ON THE APPLICATION OR RENEWAL FORM OF A LICENSE,

(B) A STATEMENT OR SYMBOL MADE ON A NON-DRIVER IDENTIFICATION CARD APPLICATION OR RENEWAL FORM,

(C) ENROLLMENT IN THE REGISTRY WEBSITE MAINTAINED BY THE DEPARTMENT, OR

(D) THROUGH ANY OTHER METHOD IDENTIFIED BY THE COMMISSIONER.

3. (A) INFORMATION CONTAINED IN THE REGISTRY SHALL BE ACCESSIBLE TO:

(1) FEDERALLY REGULATED ORGAN PROCUREMENT AGENCIES,

(2) EYE AND TISSUE BANKS LICENSED BY THE DEPARTMENT PURSUANT TO ARTICLE FORTY-THREE-B OF THIS CHAPTER, AND

(3) ANY OTHER ENTITY FORMALLY APPROVED BY THE COMMISSIONER.

(B) THE INFORMATION CONTAINED IN THE REGISTRY SHALL NOT BE RELEASED TO ANY PERSON EXCEPT AS EXPRESSLY AUTHORIZED BY THIS SECTION SOLELY FOR THE PURPOSE OF IDENTIFYING POTENTIAL ORGAN AND TISSUE DONORS AT OR NEAR THE TIME OF DEATH.

4. IF THE DEPARTMENT HAD AN ESTABLISHED REGISTRY PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, IT SHALL BE DEEMED TO MEET THE REQUIREMENTS OF THIS SECTION.

5. THE REGISTRY SHALL PROVIDE PERSONS ENROLLED THE OPPORTUNITY TO SPECIFY WHICH ORGANS AND TISSUES THEY WANT TO DONATE AND IF THE DONATION CAN BE USED FOR TRANSPLANTATION AND THERAPY OR RESEARCH, OR BOTH.

6. THE DEPARTMENT OF MOTOR VEHICLES SHALL COOPERATE WITH A PERSON THAT ADMINISTERS ANY DONOR REGISTRY THAT THIS STATE ESTABLISHES, CONTRACTS FOR, OR RECOGNIZES FOR THE PURPOSE OF TRANSFERRING TO THE DONOR REGISTRY ALL RELEVANT INFORMATION REGARDING A DONOR'S MAKING, AMENDMENT TO, OR REVOCATION OF AN ANATOMICAL GIFT.

7. A DONOR REGISTRY SHALL BE ACCESSIBLE SEVEN DAYS A WEEK ON A TWENTY-FOUR-HOUR BASIS.

8. THE COMMISSIONER IS AUTHORIZED TO PROMULGATE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

S 4318. EFFECT OF ANATOMICAL GIFT ON ADVANCE HEALTH-CARE DIRECTIVE. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "ADVANCE HEALTH-CARE DIRECTIVE" MEANS A POWER OF ATTORNEY FOR HEALTH CARE OR A RECORD SIGNED BY A PROSPECTIVE DONOR CONTAINING THE PROSPECTIVE DONOR'S DIRECTION CONCERNING A HEALTH-CARE DECISION FOR THE PROSPECTIVE DONOR;

(B) "DECLARATION" MEANS A RECORD SIGNED BY A PROSPECTIVE DONOR SPECIFYING THE CIRCUMSTANCES UNDER WHICH A LIFE SUPPORT SYSTEM MAY BE WITHHELD OR WITHDRAWN FROM THE PROSPECTIVE DONOR; AND

(C) "HEALTH-CARE DECISION" MEANS ANY DECISION MADE REGARDING THE HEALTH CARE OF THE PROSPECTIVE DONOR.

2. IF THE TERMS OF A PROSPECTIVE DONOR'S DECLARATION OR ADVANCE HEALTH-CARE DIRECTIVE AND THE EXPRESS OR IMPLIED TERMS OF AN ANATOMICAL GIFT MADE BY THE PROSPECTIVE DONOR, OR MADE BY ANY OTHER PERSON, APPEAR TO BE IN CONFLICT WITH REGARD TO THE ADMINISTRATION OF MEASURES NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF A PART FOR TRANSPLANTATION OR THERAPY, APPROPRIATE CONSULTATION SHALL OCCUR TO DETERMINE THE PROSPEC-

TIVE DONOR'S ACTUAL OR LIKELY INTENT IN RESOLVING THAT CONFLICT. RESOLUTION OF THE CONFLICT SHALL OCCUR AS EXPEDITIOUSLY AS POSSIBLE. IF THE PROSPECTIVE DONOR IS UNABLE TO RESOLVE THE CONFLICT, ANOTHER PERSON AUTHORIZED BY LAW OTHER THAN THIS ARTICLE TO MAKE HEALTH CARE DECISIONS ON BEHALF OF THE PROSPECTIVE DONOR SHALL RESOLVE THE CONFLICT. PRIOR TO THE RESOLUTION OF THE CONFLICT, MEASURES NECESSARY TO ENSURE THE MEDICAL SUITABILITY OF THE PART MAY NOT BE WITHHELD OR WITHDRAWN FROM THE PROSPECTIVE DONOR PROVIDED THAT WITHHOLDING OR WITHDRAWING OF THE MEASURES ARE NOT CONTRAINDICATED BY APPROPRIATE END-OF-LIFE CARE.

S 4319. COOPERATION BETWEEN THE CORONER OR MEDICAL EXAMINER AND PROCUREMENT ORGANIZATION. 1. A CORONER OR MEDICAL EXAMINER SHALL COOPERATE WITH PROCUREMENT ORGANIZATIONS TO MAXIMIZE THE OPPORTUNITY TO RECOVER ANATOMICAL GIFTS FOR THE PURPOSE OF TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION.

2. IF A CORONER OR MEDICAL EXAMINER RECEIVES NOTICE FROM A PROCUREMENT ORGANIZATION THAT AN ANATOMICAL GIFT MAY BE AVAILABLE OR WAS MADE WITH RESPECT TO A DECEDENT WHOSE BODY IS UNDER THE JURISDICTION OF THE CORONER OR MEDICAL EXAMINER AND A POST-MORTEM EXAMINATION IS GOING TO BE PERFORMED, UNLESS THE CORONER OR MEDICAL EXAMINER DENIES RECOVERY IN ACCORDANCE WITH SECTION SIX HUNDRED SEVENTY-FOUR-A OF THE COUNTY LAW, THE CORONER OR MEDICAL EXAMINER OR DESIGNEE SHALL CONDUCT A POST-MORTEM EXAMINATION OF THE BODY OR THE PART IN A MANNER AND WITHIN A PERIOD COMPATIBLE WITH ITS PRESERVATION FOR THE PURPOSES OF THE GIFT.

3. A PART MAY NOT BE REMOVED FROM THE BODY OF A DECEDENT UNDER THE JURISDICTION OF A CORONER OR MEDICAL EXAMINER FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION UNLESS THE PART IS THE SUBJECT OF AN ANATOMICAL GIFT. THE BODY OF A DECEDENT UNDER THE JURISDICTION OF THE CORONER OR MEDICAL EXAMINER MAY NOT BE DELIVERED TO A PERSON FOR RESEARCH OR EDUCATION UNLESS THE BODY IS THE SUBJECT OF AN ANATOMICAL GIFT. THIS SUBDIVISION SHALL NOT PRECLUDE A CORONER OR MEDICAL EXAMINER FROM PERFORMING THE INVESTIGATION UPON THE BODY OR PARTS OF A DECEDENT UNDER THE JURISDICTION OF THE CORONER OR MEDICAL EXAMINER.

S 4320. RELEASE OF RECORDS. UPON REQUEST OF A PROCUREMENT ORGANIZATION, A CORONER OR MEDICAL EXAMINER SHALL RELEASE TO THE PROCUREMENT ORGANIZATION THE NAME, CONTACT INFORMATION, AND AVAILABLE MEDICAL AND SOCIAL HISTORY OF A DECEDENT WHOSE BODY IS UNDER THE JURISDICTION OF THE CORONER OR MEDICAL EXAMINER. IF THE DECEDENT'S BODY OR PART IS MEDICALLY SUITABLE FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION, THE CORONER OR MEDICAL EXAMINER SHALL PROMPTLY RELEASE POST-MORTEM EXAMINATION RESULTS TO THE PROCUREMENT ORGANIZATION. THE PROCUREMENT ORGANIZATION MAY MAKE A SUBSEQUENT DISCLOSURE OF THE POST-MORTEM EXAMINATION RESULTS OR OTHER INFORMATION RECEIVED FROM THE CORONER OR MEDICAL EXAMINER ONLY IF RELEVANT TO TRANSPLANTATION, THERAPY OR RESEARCH.

S 3. Subdivision 10 of section 4201 of the public health law, as added by chapter 76 of the laws of 2006, is amended to read as follows:

10. This section does not supersede, alter or abridge THE EXECUTION OF AN ANATOMICAL GIFT OR any provision of article forty-three of this chapter [including, but not limited to, the persons authorized to execute an anatomical gift pursuant to section forty-three hundred one of this chapter].

S 4. Section 4221 of the public health law, as amended by chapter 128 of the laws of 1979, is amended to read as follows:

S 4221. Removal of eyes and/or parts thereof after death. If any donation, authorization [or], consent [made pursuant to section forty-three hundred three of this article] or dissection made pursuant to [subdivision three of section forty-two hundred ten of this] article

FORTY-THREE OF THIS CHAPTER relates to the removal of a deceased person's eyes and/or parts thereof, the individual or agency authorized to remove such eyes and/or parts thereof may permit such removal to be made by a medical student, technician or nurse.

S 5. The opening paragraph of subdivision 1, subdivision 2 and subdivision 3 of section 4222 of the public health law, the opening paragraph of subdivision 1 and subdivision 2 as amended by chapter 242 of the laws of 1981 and subdivision 3 as added by chapter 879 of the laws of 1985, are amended to read as follows:

Upon request from a general hospital or medical center for corneal tissue for transplant or pituitary gland tissue for extraction of growth hormone, the coroner or medical examiner may then request or authorize an agent to request from the authorized person under the conditions established [in subdivision two of section forty-three hundred one] UNDER ARTICLE FORTY-THREE of this chapter, the authorization, which may be oral or written according to law, to perform the removal. Upon receiving such authorization, the coroner or medical examiner shall authorize the supply of such corneal tissue or pituitary gland tissue upon the following conditions:

2. The coroner or medical examiner authorizing the removal of corneal tissue or the pituitary gland tissue pursuant to the provisions of this section shall not be held liable in a civil action for damages by any person specified [by subdivision two of section forty-three hundred one] IN SECTION FORTY-THREE HUNDRED SIX of this chapter, for such removal where after the exercise of due diligence such coroner or medical examiner obtained authorization from any person specified [by subdivision two of section forty-three hundred one of this chapter] UNDER SUCH SECTION.

3. Except where an anatomical gift has previously been requested or authorized, upon the request of a tissue bank [or storage facility] as defined in section forty-three hundred of this chapter, the coroner or medical examiner may then provide the name of the decedent under his OR HER jurisdiction and the name of the decedent's spouse or other persons authorized to execute an anatomical gift in accordance with the provisions of [section forty-three hundred one] ARTICLE FORTY-THREE of this chapter.

S 6. Subdivision 5 of section 4364 of the public health law, as added by chapter 589 of the laws of 1990, is amended to read as follows:

5. No hospital or other facility and no physician shall permit any person to procure tissue or non-transplant organs unless such person has been licensed in accordance with this article, or has been asked by a licensed bank or storage facility to procure a specified tissue or non-transplant organ. No bank or storage facility shall sell or otherwise transfer tissue for valuable consideration. Valuable consideration shall not include reasonable costs associated with the procurement, processing, storage and distribution of tissue. Nothing [herein] IN THIS SECTION shall impair the provisions of section forty-three hundred [seven] THIRTEEN of this chapter.

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

1. Application for license. Application for a driver's license shall be made to the commissioner. The fee prescribed by law may be submitted with such application. The applicant shall furnish such proof of identity, age, and fitness as may be required by the commissioner. The commissioner may also provide that the application procedure shall include the

taking of a photo image or images of the applicant in accordance with rules and regulations prescribed by the commissioner. In addition, the commissioner also shall require that the applicant provide his or her social security number and provide space on the application so that the applicant may register in the New York state [organ and tissue donor] DONATE LIFE registry under section forty-three hundred [ten] SEVENTEEN of the public health law. In addition, an applicant for a commercial driver's license who will operate a commercial motor vehicle in interstate commerce shall certify that such applicant meets the requirements to operate a commercial motor vehicle, as set forth in public law 99-570, title XII, and title 49 of the code of federal regulations, and all regulations promulgated by the United States secretary of transportation under the hazardous materials transportation act. Upon a determination that the holder of a commercial driver's license has made any false statement, with respect to the application for such license, the commissioner shall revoke such license.

S 8. Paragraph (a) of subdivision 1 of section 504 of the vehicle and traffic law, as separately amended by chapters 568 and 639 of the laws of 2006, is amended to read as follows:

(a) Every license or renewal thereof shall contain a distinguishing mark and adequate space upon which an anatomical gift, pursuant to section forty-three hundred [ten] SEVENTEEN of the public health law, by the licensee shall be recorded and shall contain such other information and shall be issued in such form as the commissioner shall determine; provided, however, every license or renewal thereof issued to a person under the age of twenty-one years shall have prominently imprinted upon it the statement "UNDER 21 YEARS OF AGE" in notably distinctive print or format; provided further, however, every license or renewal thereof issued to a person making an anatomical gift shall have prominently printed upon the front of such license or renewal thereof the statement "ORGAN DONOR" in notably distinctive print or format. The commissioner shall not require fees for the issuance of such licenses or renewals thereof to persons under twenty-one years of age or to persons making an anatomical gift which are different from the fees required for the issuance of licenses or renewals thereof to persons twenty-one years of age or over or to persons not making an anatomical gift.

S 9. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.