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I N  A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GOTTFRIED, BRODSKY, HOYT, CONTE, BING, PAULIN, JAFFEE, BROOK-KRASNY, PHEFFER, MAISEL, SCHROEDER, FIELDS, MILLMAN, BRADLEY, JOHN, GUNTHER, CAHILL, SPANO, ALFANO, KAVANAGH, KELLNER, DINOWITZ -- Multi-Sponsored by -- M. of A. BARRA, BOYLAND, CUSICK, DelMONTE, GALEF, GLICK, JACOBS, KOON, LANCMAN, LIFTON, V. LOPEZ, LUPARDO, MAGEE, McENENY, REILLY, ROBINSON, SCARBOROUGH, SWEENEY, THIELE, TITONE -- read once and referred to the Committee on Health -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public health law, in relation to revising the order of persons with priority for organ donation and consent for organ donations

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

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

S 4301. Persons who may execute an anatomical gift. 1. Any individual of sound mind and eighteen years of age or more may give all or any part of his or her body for any purpose specified in section [four thousand three] FORTY-THREE hundred two of this article, the gift to take effect upon death. In any case where the donor has properly executed an organ donor card, driver's license authorization to make an anatomical gift, pursuant to paragraph (a) of subdivision one of section five hundred four of the vehicle and traffic law, registered in the New York state organ and tissue donor registry under section forty-three hundred ten of this article, or has otherwise given written authorization for organ or tissue donation, authorization for donation shall not be rescinded by an objection by a member of any of the classes specified in paragraphs (a)

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

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through [(f)] (H) of subdivision two of this section, except upon a showing that the donor revoked the authorization.

2. Any of the following persons, in the order of priority stated, may, when persons in prior classes are not REASONABLY available, WILLING, AND ABLE TO ACT, at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same class or prior class specified in paragraph (a), (b), (c), (d) [or], (e), (F), (G) OR (H) of this subdivision, or reason to believe that an anatomical gift is contrary to the decedent's religious or moral beliefs, give all or any part of the decedent's body for any purpose specified in section [four thousand three] FORTY-THREE hundred two of this article:

(a) THE PERSON DESIGNATED AS THE DECEDENT'S HEALTH CARE AGENT UNDER ARTICLE TWENTY-NINE-C OF THIS CHAPTER, SUBJECT TO ANY WRITTEN STATEMENT IN THE HEALTH CARE PROXY FORM,

(B) THE PERSON DESIGNATED AS THE DECEDENT'S AGENT IN A WRITTEN INSTRUMENT UNDER ARTICLE FORTY-TWO OF THIS CHAPTER, SUBJECT TO ANY WRITTEN STATEMENT IN THE WRITTEN INSTRUMENT,

(C) the spouse, IF NOT LEGALLY SEPARATED FROM THE PATIENT, OR THE DOMESTIC PARTNER,

[(b)] (D) a son or daughter eighteen years of age or older,

[(c)] (E) either parent,

[(d)] (F) a brother or sister eighteen years of age or older,

[(e)] (G) a guardian of the person of the decedent at the time of his death,

[(f)] (H) any other person authorized or under the obligation to dispose of the body.

3. FOR THE PURPOSES OF THIS SECTION, "REASONABLY AVAILABLE" MEANS THAT A PERSON TO BE CONTACTED CAN BE CONTACTED 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.

4. FOR THE PURPOSES OF THIS SECTION, "DOMESTIC PARTNER" MEANS A PERSON WHO, WITH RESPECT TO ANOTHER PERSON:

(A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATIONSHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE UNITED STATES OR ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGISTERED AS THE DOMESTIC PARTNER OF THE PERSON WITH ANY REGISTRY MAINTAINED BY THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY, OR FOREIGN JURISDICTION; OR

(B) IS FORMALLY RECOGNIZED AS A BENEFICIARY OR COVERED PERSON UNDER THE OTHER PERSON'S EMPLOYMENT BENEFITS OR HEALTH INSURANCE; OR

(C) IS DEPENDENT OR MUTUALLY INTERDEPENDENT ON THE OTHER PERSON FOR SUPPORT, AS EVIDENCED BY THE TOTALITY OF THE CIRCUMSTANCES INDICATING A MUTUAL INTENT TO BE DOMESTIC PARTNERS INCLUDING BUT NOT LIMITED TO: COMMON OWNERSHIP OR JOINT LEASING OF REAL OR PERSONAL PROPERTY; COMMON HOUSEHOLDING, SHARED INCOME OR SHARED EXPENSES; CHILDREN IN COMMON; SIGNS OF INTENT TO MARRY OR BECOME DOMESTIC PARTNERS UNDER PARAGRAPH (A) OR (B) OF THIS SUBDIVISION; OR THE LENGTH OF THE PERSONAL RELATIONSHIP OF THE PERSONS.

EACH PARTY TO A DOMESTIC PARTNERSHIP SHALL BE CONSIDERED TO BE THE DOMESTIC PARTNER OF THE OTHER PARTY. "DOMESTIC PARTNER" SHALL NOT INCLUDE A PERSON WHO IS RELATED TO THE OTHER PERSON BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE TO THE OTHER PERSON IN NEW YORK STATE. "DOMESTIC PARTNER" SHALL ALSO NOT INCLUDE ANY PERSON WHO IS LESS THAN EIGHTEEN YEARS OF AGE OR WHO IS THE ADOPTED CHILD OF THE OTHER PERSON OR WHO IS

RELATED BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE IN NEW YORK STATE TO A PERSON WHO IS THE LAWFUL SPOUSE OF THE OTHER PERSON.

5. The donee shall not accept the gift under the following circumstances:

(a) the donee has actual notice of contrary indication by the decedent;

(b) where the donor has not properly executed an organ donor card, driver's license authorization to make an anatomical gift, pursuant to paragraph (a) of subdivision one of section five hundred four of the vehicle and traffic law, registered in the New York state organ and tissue donor registry under section forty-three hundred ten of this article, or otherwise given written authorization for organ or tissue donation, or has revoked any such authorization, and the gift is opposed by a person or persons in the highest priority available of the classes specified in paragraph (a), (b), (c), (d) [or], (e), (F), (G) OR (H) of subdivision two of this section; or

(c) the donee has reason to believe that an anatomical gift is contrary to the decedent's religious or moral beliefs.

[4.] 6. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of gift for the purposes intended.

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

8. THE PERSON WHO DOCUMENTS THE MAKING, AMENDING OR REVOKING OF AN ANATOMICAL GIFT, ACTING REASONABLY AND IN GOOD FAITH IN ACCORDANCE WITH THIS ARTICLE, MAY ACCEPT AN ANATOMICAL GIFT UNDER THIS ARTICLE MADE BY A PERSON WHO REPRESENTS THAT HE OR SHE IS ENTITLED TO CONSENT TO THE DONATION.

S 2. Section 4351 of the public health law, as added by chapter 668 of the laws of 1997 and subdivision 4 as amended by chapter 639 of the laws of 2006, is amended to read as follows:

S 4351. Duties of hospital administrators, organ procurement organizations, eye banks and tissue banks. 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 regionally by the federally designated organ procurement organization subject to the approval of such criteria by the department, 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.

2. 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.

3. 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.

4. Where a patient is a suitable candidate for organ, eye or tissue donation and where the patient has not properly executed an organ donor card, driver's license authorization to make an anatomical gift, pursuant to paragraph (a) of subdivision one of section five hundred four of the vehicle and traffic law, registered in the New York state organ and tissue registry under section forty-three hundred ten of this [article] CHAPTER, or otherwise given written authorization for organ, eye or tissue donation, the hospital or its designee shall cause a timely request to be made to any of the following persons, in order of priority stated, when persons in prior classes are not REASONABLY available, WILLING, AND ABLE TO ACT, and in the absence of actual notice of contrary intentions by the decedent, or actual notice of opposition by a person or persons in the highest priority available of the classes specified in paragraph (a), (b), (c), (d), [or] (e), (F) OR (G) of this subdivision, or other reason to believe that an anatomic gift is contrary to the decedent's religious beliefs, to consent to the gift of all or any part of the decedent's body for any purpose specified in article forty-three of this chapter:

(a) THE PERSON DESIGNATED AS THE DECEDENT'S HEALTH CARE AGENT UNDER ARTICLE TWENTY-NINE-C OF THIS CHAPTER, SUBJECT TO ANY WRITTEN STATEMENT IN THE HEALTH CARE PROXY FORM;

(B) THE PERSON DESIGNATED AS THE DECEDENT'S AGENT IN A WRITTEN INSTRUMENT UNDER ARTICLE FORTY-TWO OF THIS CHAPTER, SUBJECT TO ANY WRITTEN STATEMENT IN THE WRITTEN INSTRUMENT;

(C) the spouse, IF NOT LEGALLY SEPARATED FROM THE PATIENT, OR THE DOMESTIC PARTNER;

[(b)] (D) a son or daughter eighteen years of age or older;

[(c)] (E) either parent;

[(d)] (F) a brother or sister eighteen years of age or older;

[(e)] (G) a guardian of the person of the decedent at the time of his or her death.

5. FOR THE PURPOSES OF THIS SECTION, "REASONABLY AVAILABLE" MEANS THAT A PERSON TO BE CONTACTED CAN BE CONTACTED 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.

6. FOR THE PURPOSES OF THIS SECTION, "DOMESTIC PARTNER" MEANS A PERSON WHO, WITH RESPECT TO ANOTHER PERSON:

(A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATIONSHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE UNITED STATES OR ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGISTERED AS THE DOMESTIC PARTNER OF THE PERSON WITH ANY REGISTRY MAINTAINED BY

THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY, OR FOREIGN JURISDICTION; OR

(B) IS FORMALLY RECOGNIZED AS A BENEFICIARY OR COVERED PERSON UNDER THE OTHER PERSON'S EMPLOYMENT BENEFITS OR HEALTH INSURANCE; OR

(C) IS DEPENDENT OR MUTUALLY INTERDEPENDENT ON THE OTHER PERSON FOR SUPPORT, AS EVIDENCED BY THE TOTALITY OF THE CIRCUMSTANCES INDICATING A MUTUAL INTENT TO BE DOMESTIC PARTNERS INCLUDING BUT NOT LIMITED TO: COMMON OWNERSHIP OR JOINT LEASING OF REAL OR PERSONAL PROPERTY; COMMON HOUSEHOLDING, SHARED INCOME OR SHARED EXPENSES; CHILDREN IN COMMON; SIGNS OF INTENT TO MARRY OR BECOME DOMESTIC PARTNERS UNDER PARAGRAPH (A) OR (B) OF THIS SUBDIVISION; OR THE LENGTH OF THE PERSONAL RELATIONSHIP OF THE PERSONS.

EACH PARTY TO A DOMESTIC PARTNERSHIP SHALL BE CONSIDERED TO BE THE DOMESTIC PARTNER OF THE OTHER PARTY. "DOMESTIC PARTNER" SHALL NOT INCLUDE A PERSON WHO IS RELATED TO THE OTHER PERSON BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE TO THE OTHER PERSON IN NEW YORK STATE. "DOMESTIC PARTNER" SHALL ALSO NOT INCLUDE ANY PERSON WHO IS LESS THAN EIGHTEEN YEARS OF AGE OR WHO IS THE ADOPTED CHILD OF THE OTHER PERSON OR WHO IS RELATED BY BLOOD IN A MANNER THAT WOULD BAR MARRIAGE IN NEW YORK STATE TO A PERSON WHO IS THE LAWFUL SPOUSE OF THE OTHER PERSON.

7. 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.

[6.] 8. 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.

[7.] 9. THE PERSON WHO DOCUMENTS THE MAKING, AMENDING OR REVOKING OF AN ANATOMICAL GIFT, ACTING REASONABLY AND IN GOOD FAITH IN ACCORDANCE WITH THIS ARTICLE, MAY ACCEPT AN ANATOMICAL GIFT UNDER THIS ARTICLE MADE BY A PERSON WHO REPRESENTS THAT HE OR SHE IS ENTITLED TO CONSENT TO THE DONATION.

10. The provisions of subdivision three of section forty-three hundred six of this chapter shall apply to this section. To the extent permissible under such subdivision, any person or organization acting pursuant to this section, shall be legally responsible for any negligent or intentional act or omission committed by such entity or its employees or agents.

[8.] 11. A gift made pursuant to the request required by this section shall be executed pursuant to applicable provisions of article forty-three of this chapter.

[9.] 12. The commissioner shall establish regulations concerning the training of persons who may be designated to perform the request, and the procedures to be employed in making it.

[10.] 13. The commissioner shall establish such additional regulations as are necessary for the implementation of this section.

S 3. Paragraph (f) of subdivision 5 of section 2981 of the public health law, as added by chapter 540 of the laws of 2000, is amended to read as follows:

(f) A health care proxy may include the principal's wishes or instructions regarding organ and tissue donation AND MAY LIMIT THE

HEALTH CARE AGENT'S AUTHORITY TO CONSENT TO ORGAN OR TISSUE DONATION OR DESIGNATE ANOTHER PERSON TO DO SO, UNDER ARTICLE FORTY-THREE OF THIS CHAPTER. Failure to state wishes or instructions shall not be construed to imply a wish not to donate.

S 4. Section 4201 of the public health law is amended by adding a new subdivision 4-a to read as follows:

4-A. A WRITTEN INSTRUMENT UNDER THIS SECTION MAY LIMIT THE DISPOSITION OF REMAINS AGENT'S AUTHORITY TO CONSENT TO ORGAN OR TISSUE DONATION OR DESIGNATE ANOTHER PERSON TO DO SO, UNDER ARTICLE FORTY-THREE OF THIS CHAPTER. FAILURE TO STATE WISHES OR INSTRUCTIONS SHALL NOT BE CONSTRUED TO IMPLY A WISH NOT TO DONATE.

S 5. This act shall take effect on the sixtieth day after it shall have become a law.