

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

3910--A

2009-2010 Regular Sessions

I N S E N A T E

April 3, 2009

Introduced by Sens. DUANE, MONSERRATE, MONTGOMERY, SERRANO, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Section 4301 of the public health law, as amended by chap-
2 ter 62 of the laws of 1994 and subdivisions 1 and 3 as amended by chap-
3 ter 639 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 in the New York state
12 organ and tissue donor registry under section forty-three hundred ten of
13 this article, or has otherwise given written authorization for organ or
14 tissue donation, authorization for donation shall not be rescinded by an
15 objection by a member of any of the classes specified in paragraphs (a)
16 through [(f)] (H) of subdivision two of this section, except upon a
17 showing that the donor revoked the authorization.
18 2. Any of the following persons, in the order of priority stated, may,
19 when persons in prior classes are not REASONABLY available, WILLING, AND
20 ABLE TO ACT, at the time of death, and in the absence of actual notice
21 of contrary indications by the decedent, or actual notice of opposition
22 by a member of the same class or prior class specified in paragraph (a),

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

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(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

1 paragraph (a) of subdivision one of section five hundred four of the
2 vehicle and traffic law, registered in the New York state organ and
3 tissue donor registry under section forty-three hundred ten of this
4 article, or otherwise given written authorization for organ or tissue
5 donation, or has revoked any such authorization, and the gift is opposed
6 by a person or persons in the highest priority available of the classes
7 specified in paragraph (a), (b), (c), (d) [or], (e), (F), (G) OR (H) of
8 subdivision two of this section; or

9 (c) the donee has reason to believe that an anatomical gift is contra-
10 ry to the decedent's religious or moral beliefs.

11 [4.] 6. A gift of all or part of a body authorizes any examination
12 necessary to assure medical acceptability of gift for the purposes
13 intended.

14 [5.] 7. The rights of the donee created by the gift are paramount to
15 the rights of others except as provided by section [four thousand three]
16 FORTY-THREE hundred eight of this article.

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

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

25 S 4351. Duties of hospital administrators, organ procurement organiza-
26 tions, eye banks and tissue banks. 1. (a) When the death of a person in
27 a hospital has occurred or is imminent, the hospital shall contact the
28 federally designated organ procurement organization in order to make a
29 preliminary determination of the suitability of the person for organ
30 donation, except where not required by paragraph (c) of this subdivi-
31 sion.

32 (b) Where contact with the federally designated organ procurement
33 organization is not required under criteria developed regionally by the
34 federally designated organ procurement organization subject to the
35 approval of such criteria by the department, the hospital shall contact
36 the appropriate eye bank or tissue bank, except where not required by
37 paragraph (c) of this subdivision.

38 (c) The federally designated organ procurement organization, in
39 consultation with the tissue procurement providers, may issue criteria
40 under which a hospital shall not be required to make the contact under
41 this subdivision.

42 (d) All hospitals shall select at least one eye bank or tissue bank
43 for the procurement of tissue, as defined in section forty-three hundred
44 sixty of this chapter. A hospital shall notify the federally designated
45 organ procurement organization of its choice of tissue procurement
46 providers. If a hospital selects more than one eye bank or tissue bank
47 as a procurement provider, it may specify a rotation of referrals for
48 purposes of tissue procurement.

49 2. Where the federally designated organ procurement organization, eye
50 bank or tissue bank is contacted, it shall, in consultation with the
51 hospital, after appropriate medical screening (which may include sero-
52 logical testing if applicable) determine suitability for organ, eye and
53 tissue donation, as appropriate. Where a federally designated organ
54 procurement organization is contacted, it shall contact the appropriate
55 eye bank or tissue bank with respect to suitability for eye or tissue
56 donation.

1 3. If the federally designated organ procurement organization, eye
2 bank or tissue bank determines that organ, eye or tissue donation,
3 respectively, is not appropriate based on established medical criteria,
4 this shall be noted by hospital personnel on the patient's record, and
5 no further action with respect to organ, eye or tissue donation, respec-
6 tively, is necessary.

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

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

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

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

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

34 [(c)] (E) either parent;

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

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

38 5. FOR THE PURPOSES OF THIS SECTION, "REASONABLY AVAILABLE" MEANS
39 THAT A PERSON TO BE CONTACTED CAN BE CONTACTED WITHOUT UNDUE EFFORT AND
40 WILLING AND ABLE TO ACT IN A TIMELY MANNER CONSISTENT WITH EXISTING
41 MEDICAL CRITERIA NECESSARY FOR THE MAKING OF AN ANATOMICAL GIFT.

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

44 (A) IS FORMALLY A PARTY IN A DOMESTIC PARTNERSHIP OR SIMILAR RELATION-
45 SHIP WITH THE OTHER PERSON, ENTERED INTO PURSUANT TO THE LAWS OF THE
46 UNITED STATES OR ANY STATE, LOCAL OR FOREIGN JURISDICTION, OR REGISTERED
47 AS THE DOMESTIC PARTNER OF THE PERSON WITH ANY REGISTRY MAINTAINED BY
48 THE EMPLOYER OF EITHER PARTY OR ANY STATE, MUNICIPALITY, OR FOREIGN
49 JURISDICTION; OR

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

52 (C) IS DEPENDENT OR MUTUALLY INTERDEPENDENT ON THE OTHER PERSON FOR
53 SUPPORT, AS EVIDENCED BY THE TOTALITY OF THE CIRCUMSTANCES INDICATING A
54 MUTUAL INTENT TO BE DOMESTIC PARTNERS INCLUDING BUT NOT LIMITED TO:
55 COMMON OWNERSHIP OR JOINT LEASING OF REAL OR PERSONAL PROPERTY; COMMON
56 HOUSEHOLDING, SHARED INCOME OR SHARED EXPENSES; CHILDREN IN COMMON;

1 SIGNS OF INTENT TO MARRY OR BECOME DOMESTIC PARTNERS UNDER PARAGRAPH (A)
2 OR (B) OF THIS SUBDIVISION; OR THE LENGTH OF THE PERSONAL RELATIONSHIP
3 OF THE PERSONS.

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

12 7. The person initiating the request shall be designated by a hospital
13 and shall be a representative of a federally designated organ procure-
14 ment organization, eye bank, tissue bank, or a designated requestor. As
15 used in this section a "designated requestor" shall mean a person who
16 has completed a course provided by a federally designated organ procure-
17 ment organization, eye bank or tissue bank, whichever is applicable, on
18 how to approach potential donor families and request organ, eye, or
19 tissue donation.

20 [6.] 8. Any employee or agent of a federally designated organ procure-
21 ment organization, eye bank or tissue bank acting pursuant to this
22 section shall be held to the same standard of confidentiality as that
23 imposed on employees of the hospital.

24 [7.] 9. THE PERSON WHO DOCUMENTS THE MAKING, AMENDING OR REVOKING OF
25 AN ANATOMICAL GIFT, ACTING REASONABLY AND IN GOOD FAITH IN ACCORDANCE
26 WITH THIS ARTICLE, MAY ACCEPT AN ANATOMICAL GIFT UNDER THIS ARTICLE MADE
27 BY A PERSON WHO REPRESENTS THAT HE OR SHE IS ENTITLED TO CONSENT TO THE
28 DONATION.

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

35 [8.] 11. A gift made pursuant to the request required by this section
36 shall be executed pursuant to applicable provisions of article forty-
37 three of this chapter.

38 [9.] 12. The commissioner shall establish regulations concerning the
39 training of persons who may be designated to perform the request, and
40 the procedures to be employed in making it.

41 [10.] 13. The commissioner shall establish such additional regulations
42 as are necessary for the implementation of this section.

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

46 (f) A health care proxy may include the principal's wishes or
47 instructions regarding organ and tissue donation AND MAY LIMIT THE
48 HEALTH CARE AGENT'S AUTHORITY TO CONSENT TO ORGAN OR TISSUE DONATION OR
49 DESIGNATE ANOTHER PERSON TO DO SO, UNDER ARTICLE FORTY-THREE OF THIS
50 CHAPTER. Failure to state wishes or instructions shall not be construed
51 to imply a wish not to donate.

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

54 4-A. A WRITTEN INSTRUMENT UNDER THIS SECTION MAY LIMIT THE DISPOSITION
55 OF REMAINS AGENT'S AUTHORITY TO CONSENT TO ORGAN OR TISSUE DONATION OR
56 DESIGNATE ANOTHER PERSON TO DO SO, UNDER ARTICLE FORTY-THREE OF THIS

1 CHAPTER. FAILURE TO STATE WISHES OR INSTRUCTIONS SHALL NOT BE CONSTRUED
2 TO IMPLY A WISH NOT TO DONATE.
3 S 5. This act shall take effect on the sixtieth day after it shall
4 have become a law.