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

7721

I N S E N A T E

May 5, 2010

Introduced by Sens. DUANE, KRUEGER -- 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 presumed consent

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 348 of the laws of 2009, 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 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or has otherwise given written authorization for organ or tissue donation, authorization for donation shall not be rescinded [by an objection by a member of any of the classes specified in paragraphs (a) through (h) of subdivision two of this section,] except upon a showing that the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), (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 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,

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

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(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,

(d) a son or daughter eighteen years of age or older,

(e) either parent,

(f) a brother or sister eighteen years of age or older,

(g) a guardian of the person of the decedent at the time of his death,

(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), (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].

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

[7.] 4. The rights of the donee created by the gift are paramount to the rights of others except as provided by section forty-three hundred eight of this article.

[8.] 5. 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. This act shall take effect immediately.