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

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2011-2012 Regular Sessions

I N A S S E M B L Y

May 17, 2011

Introduced by M. of A. GOTTFRIED, HOYT, CONTE -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to anatomical gifts; and to repeal article 43-A of the public health law relating to consents for anatomical gifts

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

Section 1. Article 43 of the public health law, as added by chapter 466 of the laws of 1970, section 4301 as amended by chapter 348 of the laws of 2009, subdivision 5 of section 4302 as added, subdivision 2 of section 4306 as amended and subdivision 4 of such section as added by chapter 589 of the laws of 1990, subdivision 2 of section 4303 as amended by chapter 196 of the laws of 2005, section 4307 as amended by chapter 362 of the laws of 2009, section 4308 as added and section 4309 as renumbered by chapter 323 of the laws of 1994, section 4310 as amended by chapter 639 of the laws of 2006, the section heading and subdivision 1 of section 4310 as separately amended by chapter 640 of the laws of 2006, subdivision 2 of section 4310 as amended by chapter 161 of the laws of 2010, is amended to read as follows:

ARTICLE 43

ANATOMICAL GIFTS

Section 4300. Definitions.
4301. Persons who may execute an anatomical gift.
4302. [Persons who may become donees and purposes for which anatomical gifts may be made] USES AND DISPOSITION OF AN ANATOMICAL GIFT.
4303. Manner of executing anatomical gifts.
4304. Delivery of document of gift.
4305. Revocation of the gift.
4306. Rights and duties at death.
4306-A. DECISIONS RELATING TO LIFE-SUSTAINING TREATMENT.

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

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4307. Prohibition of sales and purchases of human organs.
4308. Prohibition on charging a fee to a donor's estate.
4309. Application.
4310. New York state donate life registry for organ and tissue donations.
4311. REQUEST FOR CONSENT TO AN ANATOMICAL GIFT.

S 4300. DEFINITIONS. [AS USED IN] IN this [section] ARTICLE, THE DEFINITIONS IN ARTICLE FORTY-THREE-B OF THIS CHAPTER SHALL APPLY, EXCEPT WHERE THEY DIFFER WITH THE DEFINITIONS IN THIS SECTION, AND, the following terms shall have the following meanings:

1. "ANATOMICAL GIFT" OR "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.

2. "Bank or storage facility" OR "BANK" means [a hospital, laboratory or other facility licensed or approved under the laws of any state for storage of human bodies or parts thereof, for use in medical education, research, therapy, or transplantation to individuals] ANY PERSON OR FACILITY WHICH PROCURES, STORES OR ARRANGES FOR THE STORAGE OF (A) NON-TRANSPLANT ORGANS, OR (B) TISSUE FOR TRANSPLANTATION, THERAPY, EDUCATION, RESEARCH, OR FERTILIZATION PURPOSES, INCLUDING AUTOLOGOUS PROCEDURES. AN ORGAN PROCUREMENT ORGANIZATION SHALL NOT CONSTITUTE A BANK OR STORAGE FACILITY SOLELY BY VIRTUE OF STORING OR ARRANGING FOR THE STORAGE OF HEART VALVES, NOR SHALL ANY PERSON OR ENTITY WHICH STORES NON-TRANSPLANT ORGANS OR TISSUES SOLELY FOR THE PURPOSE OF RESEARCH AND/OR EDUCATION CONDUCTED BY SUCH PERSON OR ENTITY BE DEEMED A BANK OR STORAGE FACILITY.

[2] 3. "Decedent" means a deceased individual of any age and includes a stillborn infant or fetus.

[3.] 4. "DOCUMENT OF GIFT" MEANS A WRITTEN, RECORDED TELEPHONIC, ELECTRONIC OR OTHER RECORD USED TO MAKE AN ANATOMICAL GIFT, INCLUDING A STATEMENT OR SYMBOL ON A DRIVER'S LICENSE, IDENTIFICATION CARD, OR DONOR REGISTRY, INCLUDING THE NEW YORK DONATE LIFE REGISTRY.

5. "Donor" means an individual [who makes a gift of all or part of his body] WHOSE BODY OR PART IS THE SUBJECT ON AN ANATOMICAL GIFT.

[4] 6. "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.

[5] 7. "Part" of a body includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts".

[6] 8. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

[7] 9. "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

[8] 10. "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

11. "REASONABLY AVAILABLE" MEANS THAT A PERSON TO BE CONTACTED CAN BE CONTACTED WITHOUT UNDUE EFFORT AND IS WILLING AND ABLE TO ACT IN A TIMELY MANNER CONSISTENT WITH EXISTING MEDICAL CRITERIA NECESSARY FOR THE MAKING OF AN ANATOMICAL GIFT.

12. "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.

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 A DOCUMENT OF GIFT SUCH AS 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] MADE AN ANATOMICAL GIFT BY ENROLLING in the New York state [organ and tissue donor] DONATE LIFE 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] IN THE ABSENCE OF A GIFT MADE BY THE DONOR UNDER SUBDIVISION ONE OF THIS SECTION, 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] MAJORITY OF THE MEMBERS 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 OR THE LAWS OF THE JURISDICTION IN WHICH THE DESIGNATION WAS MADE, subject to any written statement in the health care proxy form AND THE LAW OF THE JURISDICTION IN WHICH THE DESIGNATION WAS MADE,

(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.

IF THERE IS MORE THAN ONE MEMBER OF A CLASS LISTED IN PARAGRAPH (A), (B), (D), (E), (F), (G) OR (H) OF THIS SUBDIVISION 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 TWO 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 OF THE HIGHEST PRIORITY WHO ARE REASONABLY AVAILABLE.

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] A PERSON shall not accept the gift under the following circumstances:

(a) the [donee] PERSON 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] MADE AN ANATOMICAL GIFT BY ENROLLING in the New York state [organ and tissue donor] DONATE LIFE 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] PERSON has reason to believe that an anatomical gift is contrary to the decedent's religious or moral beliefs.

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

[7] 5. The rights of the [donee] PERSON created by the gift are paramount to the rights of others except as provided by section 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 4302. [Persons who may become donees and purposes for which anatomical gifts may be made] USES AND DISPOSITION OF AN ANATOMICAL GIFT. [The following persons may become donees of gifts or bodies or parts thereof for the purposes stated:

1. any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

2. any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy; or

3. any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

4. any specific donee, for therapy or transplantation needed by him.

5. an organ procurement organization meeting the requirements of article forty-three-B of this chapter.] 1. EVERY GIFT UNDER THIS ARTICLE SHALL PASS AS FOLLOWS:

(A) ONLY THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION MAY ACCEPT A GIFT OF A SOLID ORGAN FOR TRANSPLANTATION OR THERAPY.

(B) ONLY A NEW YORK STATE LICENSED BANK OR BANKS MAY ACCEPT A GIFT OF AN EYE OR TISSUE FOR TRANSPLANTATION OR THERAPY.

(C) ONLY A NEW YORK STATE LICENSED BANK, ACCREDITED MEDICAL OR DENTAL SCHOOL, COLLEGE OR UNIVERSITY OR APPROPRIATE RESEARCH ORGANIZATION MAY ACCEPT A GIFT FOR MEDICAL OR DENTAL EDUCATION, RESEARCH, ADVANCEMENT OF MEDICAL OR DENTAL SCIENCE.

2. IF THE EXPRESSED INTENT OF THE GIFT IS FOR TRANSPLANTATION OR THERAPY FOR A SPECIFIED INDIVIDUAL, THE GIFT SHALL BE USED FOR THE PURPOSE, IF SUITABLE.

3. IF THE EXPRESSED INTENT OF THE GIFT IS FOR TRANSPLANTATION OR THERAPY, OR IF THERE IS NO EXPRESSED INTENT, THE GIFT SHALL BE USED FOR TRANSPLANTATION OR THERAPY, IF SUITABLE.

4. IF THE EXPRESSED INTENT OF THE GIFT IS FOR RESEARCH OR EDUCATION, THE GIFT SHALL BE USED FOR THAT PURPOSE, IF SUITABLE. IF ANY PART OF THE GIFT CANNOT BE USED FOR RESEARCH OR EDUCATION, THE PART MAY BE USED FOR

TRANSPLANTATION OR THERAPY, UNLESS THERE IS AN EXPRESSED INTENT THAT THE PART NOT BE USED FOR TRANSPLANTATION OR THERAPY.

5. IF A GIFT EXPRESSES THE INTENT THAT IT MAY BE USED FOR MORE THAN ONE PURPOSE, IT SHALL BE USED FOR ANY OF THOSE PURPOSES, IF SUITABLE, WITH PRIORITY FOR USE FOR TRANSPLANTATION OR THERAPY, OR IN A DIFFERENT ORDER OF PRIORITY IF THAT IS EXPRESSED IN THE GIFT.

6. SUBJECT TO SUBDIVISIONS TWO, THREE, FOUR, AND FIVE OF THIS SUBDIVISION, A GIFT OF A BODY PART OF A DECEDENT FOR A PARTICULAR INTENDED PURPOSE SHALL NOT PRECLUDE THE MAKING OF ANOTHER GIFT UNDER THIS ARTICLE OF A BODY OF THE DECEDENT FOR A PARTICULAR PURPOSE.

7. IF ANY PART CANNOT OR MAY NOT BE USED FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION, CUSTODY OF THE PART SHALL PASS TO THE PERSON AUTHORIZED TO DISPOSE OF THE PART.

S 4303. Manner of executing anatomical gifts. 1. A gift of all or part of the body under this article may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

2. A gift of all or part of the body under this article may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

3. The gift may be made either to a specified donee or without specifying a donee. If the latter, the gift may be accepted by and utilized under the direction of the attending physician upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subdivision shall not participate in the procedures for removing or transplanting a part.

4. [Subject to the prohibitions in subdivision two of section four thousand three hundred six] IF the donor [may designate in his will, card or other] DESIGNATES IN THE document of gift the surgeon or physician to carry out the appropriate procedures, THE DESIGNATION SHALL BE VOID BUT THE GIFT SHALL OTHERWISE BE VALID, UNLESS IT EXPLICITLY PROVIDES OTHERWISE. [In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.]

5. Any gift by a person designated in subdivision two of section [four thousand three] FORTY-THREE hundred one of this article shall be by a document signed by him or made by his telegraphic, ELECTRONIC, recorded telephonic, or other recorded message.

S 4304. Delivery of document of gift. If the gift is made by the donor to a specified donee, the will, card or other document or [an executed] A copy thereof, may be delivered to him to expedite the appropriate procedures immediately after death; HOWEVER, delivery is not necessary to THE validity of the gift. [The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank, storage facility or registry office that accepts it for safekeeping or for facilitation of procedures after death.] On request of an interested party upon or after the donor's death, the person in possession shall produce the document for examination.

S 4305. Revocation of the gift. 1. [If the will, card, or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) the execution and delivery to the donee of a signed statement, or

(b) an oral statement of revocation made in the presence of two persons, communicated to the donee, or

(c) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(d) a signed card or document, found on his person or in his effects.

2. Any document of gift which has not been delivered to the donee may be revoked in the manner set out in subdivision one of this section or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

3. Any gift made by a will may be revoked or amended in the manner provided for revocation or amendment of wills or as provided in subdivision one of this section.] A GIFT MAY BE AMENDED OR REVOKED ORALLY IN THE PRESENCE OF TWO DISINTERESTED WITNESSES OR IN A RECORD BY THE DONOR OR, IF THE GIFT WAS MADE AFTER THE DONOR'S DEATH BY A PERSON AUTHORIZED TO DO SO UNDER SECTION FORTY-THREE HUNDRED ONE OF THIS ARTICLE, BY THE PERSON MAKING THE GIFT, BY MAJORITY DECISION OF THE REASONABLY AVAILABLE MEMBERS OF THE CLASS THAT MADE THE GIFT OR OF THE CLASS OF THE PERSON WHO MADE THE GIFT, OR BY A 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.

2. A REVOCATION OR AMENDMENT UNDER PARAGRAPH (A) OR (B) OF SUBDIVISION ONE OF THIS SECTION IS EFFECTIVE ONLY IF AND AS KNOWN BY THE ORGAN PROCUREMENT ORGANIZATION, TRANSPLANT HOSPITAL, PHYSICIAN OR TECHNICIAN 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. IN THE CASE OF THE DONATION OF A WHOLE BODY OR PART FOR PURPOSES OF EDUCATION OR RESEARCH, A REVOCATION UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION IS EFFECTIVE ONLY IF THE DONEE KNOWS OR HAS REASON TO KNOW OF THE REVOCATION BEFORE PROCEDURES ARE COMMENCED TO PREPARE THE BODY OR PART FOR THE INTENDED USE.

S 4306. Rights and duties at death. 1. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee upon the death of the donor and prior to embalming, may cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

2. When a donor is determined dead based on irreversible cessation of circulatory and respiratory functions, the time of death shall be certified by a physician. Such physician may not participate in the procedure to remove or transplant the body part. In all other cases the time of death shall be certified by the physician who attends the donor at his death and one other physician, neither of whom shall participate in the procedure for removing or transplanting the part.

3. (A) A person who acts REASONABLY AND in good faith in accord with the terms of this article or with the anatomical gift laws of another [state] JURISDICTION is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his OR HER act.

(B) A 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.

(C) AN ENTITY UNDER SECTION FORTY-THREE HUNDRED TWO OF THIS ARTICLE OR HEALTH CARE PROFESSIONAL, OR AN AGENT OR EMPLOYEE THEREOF, WHO OR WHICH RECOVERS, PROCURES, OBTAINS, OR UTILIZES AN ORGAN OR TISSUE IN REASONABLE AND GOOD FAITH RELIANCE ON INFORMATION PROVIDED IN THE NEW YORK STATE DONATE LIFE REGISTRY SHALL NOT BE LIABLE IN ANY CIVIL OR CRIMINAL ACTION OR PROCEEDING FOR ACTION BASED ON SUCH RELIANCE.

[4. At the time of acceptance of the gift, when it is known that the donation will be used for other than transplantation purposes, the donee if requested by the donor or the donor's next of kin shall advise the donor or the donor's next of kin of the body parts to be utilized, the uses to which the body parts may be put, whether body parts may be transferred to other facilities or institutions and plans for the ultimate disposition of all body parts if the donor has not specified the ultimate disposition.]

S 4306-A. DECISIONS RELATING TO LIFE-SUSTAINING TREATMENT. THIS SECTION APPLIES IN CASES WHERE (I) A LIVING PATIENT WHO LACKS DECISION-MAKING CAPACITY IS REASONABLY LIKELY, AFTER DEATH, TO BE A SUITABLE ORGAN DONOR FOR TRANSPLANTATION OR THERAPY; (II) THE PATIENT HAS MADE AN ANATOMICAL GIFT OR THERE IS NO NOTICE OF OPPOSITION TO SUCH AN ANATOMICAL GIFT BY THE PATIENT; (III) A HEALTH CARE AGENT OR SURROGATE DECISION-MAKER HAS MADE, OR MAY SOON MAKE A LAWFUL DECISION TO WITHDRAW OR WITHHOLD LIFE-SUSTAINING TREATMENT FROM THE PATIENT; AND (IV) THE TIME, PLACE OR MANNER OF WITHDRAWING OR WITHHOLDING TREATMENT COULD AFFECT THE MEDICAL SUITABILITY OF THE PATIENT'S ORGANS FOR TRANSPLANTATION OR THERAPY. IN SUCH INSTANCES, THE ATTENDING PHYSICIAN SHALL OFFER TO CONSULT WITH THE AGENT OR SURROGATE, IN COLLABORATION WITH A REPRESENTATIVE OF THE ORGAN PROCUREMENT ORGANIZATION, AND SHALL, AS REASONABLY AND MEDICALLY APPROPRIATE, DEFER THE WITHDRAWAL OR WITHHOLDING OF LIFE-SUSTAINING TREATMENT PENDING SUCH CONSULTATION. THE AGENT OR SURROGATE, AFTER SUCH CONSULTATION, AND AFTER CONSIDERATION OF THE PATIENT'S REASONABLY KNOWN WISHES UNDER THE CIRCUMSTANCES, MAY AGREE TO THE MODIFICATION OF THE TIME, PLACE OR MANNER OF THE WITHDRAWAL OF TREATMENT IN ORDER TO ENSURE THE MEDICAL SUITABILITY OF THE PATIENT'S ORGANS, PROVIDED SUCH DECISION WOULD NOT BE CONTRARY TO THE PATIENT'S REASONABLY KNOWN WISHES.

S 4307. Prohibition of sales and purchases of human organs. 1. It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ OR TISSUE for use in human transplantation. [The term human organ means the human kidney, liver, heart, lung, bone marrow, and any other human organ or tissue as may be designated by the commissioner but shall exclude blood.] The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ OR TISSUE or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

Any person who violates this section shall be guilty of a class E felony.

2. For the purposes of this section, the donation of a kidney or other organ from a live donor for transplantation into an individual conditioned upon the donation and transplantation of a similar organ into an individual specified by the donor shall not, in and of itself, be considered to be "valuable consideration" provided that such donation and transplant are performed in accordance with other applicable laws, rules and regulations, including any specific rules and regulations the commissioner may adopt, with the advice and consent of the transplant council, with respect to such conditional donations. No individual may make a donation conditioned upon the race, color, creed, national origin or religious affiliation of the recipient, and no hospital, organ procurement organization, tissue bank, physician or other professional may participate in the performance of any procedure or otherwise facilitate the donation and/or transfer of organs and/or tissue conditioned on such factors.

S 4308. Prohibition on charging a fee to a donor's estate. Notwithstanding any other provision of law, 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 4309. Application. The provisions of this article shall not be deemed to supersede or affect the provisions of the public health law relating to the functions, powers and duties of coroners, coroner's physicians or medical examiners.

S 4310. New York state donate life registry for organ and tissue donations. 1. The department shall establish an organ and tissue donor registry, which shall be called and be referred to as the "NEW YORK STATE donate life registry", OR THE "REGISTRY", which shall contain a listing of all donors who have [declared their consent to make] MADE an anatomical gift THROUGH THE REGISTRY.

2. [Such registration of consent to make an] AN anatomical gift can be made through (a) indication made on the application or renewal form of a DRIVER'S license, (b) indication made on a non-driver identification card application or renewal form, (c) enrolling in the registry website maintained by the department, which may include using an electronic signature under regulations of the commissioner and subject to article three of the state technology law, (d) indication made on a voter registration form pursuant to subdivision five of section 5-210 of the election law, or (e) through any other method identified by the commissioner. [The registration shall take effect upon the department sending written notice of the registration to the person enrolling in the registry.] WITH RESPECT TO REGISTRATIONS MADE UNDER PARAGRAPH (A), (B) OR (D) OF THIS SUBDIVISION, ALL INFORMATION DETERMINED NECESSARY BY THE DEPARTMENT SHALL BE PROVIDED BY THE DEPARTMENT OF MOTOR VEHICLES AND THE BOARD OF ELECTIONS IN A FORMAT REQUIRED BY THE DEPARTMENT. In making regulations on using an electronic signature for a registration of consent, the commissioner shall consult with the director of the office of technology.

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

(b) [The] INDIVIDUALLY IDENTIFIABLE 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, HOWEVER DEIDENTIFIED AND AGGREGATE INFORMATION, INCLUDING DEMOGRAPHIC INFORMATION MAY BE RELEASED TO THE ENTITIES DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, FOR PURPOSES OF QUALITY REVIEW AND ASSURANCE AND THE CREATION OF STATISTICAL REPORTS.

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, THERAPY, research, [or both] EDUCATION OR ANY COMBINATION THEREOF. IF A PERSON DOES NOT RESTRICT HIS OR HER DONATION, THE CONSENT SHALL BE DEEMED TO BE A CONSENT FOR ANY AND ALL ORGANS AND TISSUES FOR TRANSPLANTATION, THERAPY, AND RESEARCH PURPOSES.

[6. A person registered in the organ and tissue registry before the effective date of this subdivision shall be deemed to have expressed intent to donate, until and unless he or she files an amendment to his or her registration or a new registration expressing consent to donate.

7. The commissioner shall contact each person registered before the effective date of this subdivision in the organ and tissue registry in writing to inform him or her that at the time he or she registered, the registry was that of intent and that the registry is now one of consent, to explain in clear and understandable terms the difference between intent and consent, and to provide opportunity for the person to change his or her registration to provide consent by amending his or her current registration or executing a new registration.

8.] 5. UPON THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND ELEVEN WHICH AMENDED THIS SECTION, ANY REGISTRATION ON THE DONATE LIFE REGISTRY SHALL BE DEEMED TO BE AN AUTHORIZATION OF THE SPECIFIED ANATOMICAL GIFT, WHICH CANNOT BE REVOKED BY ANY THIRD PARTY.

6. The commissioner is authorized to promulgate rules and regulations necessary to implement the provisions of this section.

S 4311. REQUEST FOR CONSENT TO AN ANATOMICAL GIFT. 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. A HOSPITAL SHALL MAKE SUCH CONTACT IN A TIMELY MANNER SUFFICIENT TO ENSURE THAT THE EXAMINATION, EVALUATION, AND ASCERTAINMENT OF DONOR STATUS CAN BE COMPLETED WITHIN A TIME FRAME COMPATIBLE WITH THE DONATION OF ORGANS AND TISSUES FOR TRANSPLANT. THE NOTIFICATION SHALL BE MADE WITHOUT REGARD TO WHETHER THE PERSON HAS EXECUTED AN ADVANCE DIRECTIVE FOR HEALTH CARE.

(B) WHEN A HOSPITAL REFERS A PERSON WHO IS DEAD OR WHOSE DEATH IS IMMINENT TO AN ORGAN PROCUREMENT ORGANIZATION, THE ORGANIZATION SHALL MAKE A REASONABLE SEARCH OF THE RECORDS OF THE NEW YORK STATE DONATE LIFE REGISTRY AND ANY STATE-AUTHORIZED DONOR REGISTRY THAT IT KNOWS EXISTS FOR THE GEOGRAPHICAL AREA IN WHICH THE PERSON RESIDES IN ORDER TO ASCERTAIN WHETHER THE PERSON HAS MADE AN ANATOMICAL GIFT.

(C) IF THE PATIENT HAS A VALIDLY EXECUTED DONOR CARD, DONOR DESIGNATION ON A DRIVER'S LICENSE, ADVANCE DIRECTIVE FOR HEALTH CARE, WILL, OTHER DOCUMENT OF GIFT, OR REGISTRATION WITH A STATEWIDE ORGAN AND TISSUE DONOR REGISTRY, THE PROCUREMENT ORGANIZATION REPRESENTATIVE OR THE DESIGNATED REQUESTER SHALL ATTEMPT TO NOTIFY A PERSON LISTED IN

SECTION FORTY-THREE HUNDRED SIX OF THIS ACT OF THE GIFT. IF NO DOCUMENT OF GIFT IS KNOWN TO THE PROCUREMENT ORGANIZATION REPRESENTATIVE OR THE DESIGNATED REQUESTER, ONE OF THOSE TWO INDIVIDUALS SHALL ASK AN APPROPRIATE PERSON LISTED IN SECTION FORTY-THREE HUNDRED SIX OF THIS ACT WHETHER THE DECEDENT HAD A VALIDLY EXECUTED DOCUMENT OF GIFT. IF THERE IS NO EVIDENCE OF AN ANATOMICAL GIFT OR REFUSAL BY THE DECEDENT, THE PROCUREMENT ORGANIZATION REPRESENTATIVE OR THE DESIGNATED REQUESTER SHALL ATTEMPT TO NOTIFY A PERSON LISTED IN SECTION FORTY-THREE HUNDRED SIX OF THIS ARTICLE OF THE OPTION TO DONATE ORGANS OR TISSUES.

(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 MINIMALLY INVASIVE TESTING), 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, CONSENTED TO MAKE AN ANATOMICAL GIFT AND BE ENROLLED IN THE NEW YORK STATE DONATE LIFE REGISTRY UNDER SECTION FORTY-THREE HUNDRED TEN OF THIS ARTICLE, 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 PERSONS LISTED IN SUBDIVISION TWO OF SECTION FORTY-THREE HUNDRED ONE OF THIS ARTICLE.

5. 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.

S 2. Article 43-A of the public health law is REPEALED.

S 3. Subparagraph (x) of paragraph (a) of subdivision 2 of section 4201 of the public health law, as amended by chapter 401 of the laws of 2007, is amended to read as follows:

(x) a chief fiscal officer of a county or a public administrator appointed pursuant to article twelve or thirteen of the surrogate's court procedure act, [or] any other person acting on behalf of the decedent, provided that such person has executed a written statement pursu-

ant to subdivision seven of this section, A CORONER, MEDICAL EXAMINER, OR A HOSPITAL ADMINISTRATOR.

S 4. This act shall take effect immediately; provided that sections one and two of this act shall take effect on the first of January next succeeding the date on which this act shall have become a law; and provided further that effective immediately it shall be lawful for a hospital, organ procurement organization, or bank or storage facility as defined in article 43 or 43-B of the public health law to adopt and implement policies that are consistent with article 43 of the public health law as amended by section one of this act, and for appropriate personnel to act in accordance with such policies.