

STATE OF NEW YORK

8998

IN SENATE

June 12, 2018

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

AN ACT to amend the public health law, in relation to definitions and conforming changes pertaining to anatomical gifts; and to repeal certain provisions of such law relating thereto (Part A); to amend the public health law, in relation to changes in anatomical gift consent (Part B); and to amend the public health law, in relation to changes in anatomical gift revocation and amendment (Part C)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The purpose of this legislation is to
2 enact changes to follow the Uniform Anatomical Gift Act (UAGA) as
3 updated in 2006 by the National Conference of Commissioners on Uniform
4 State Laws to enhance the organ donation process. Most states have
5 adopted these changes. While New York has made recent improvements to
6 our organ donation rules and participation rates, we are still way
7 behind most states and, as a result, still face a severe organ shortage.
8 It is estimated that bringing New York's anatomical gift consent rules
9 into agreement with UAGA would produce an additional 100 donors - for a
10 total of 200-300 additional organs available - over five years.

11 § 2. This act enacts into law changes to the anatomical gift process.
12 Each component is wholly contained within a Part identified as Parts A
13 through C. The effective date for each particular provision contained
14 within such Part is set forth in the last section of such Part. Any
15 provision in any section contained within a Part, including the effec-
16 tive date of the Part, which makes a reference to a section "of this
17 act," when used in connection with that particular component, shall be
18 deemed to mean and refer to the corresponding section of the Part in
19 which it is found. Section three of this act sets forth the general
20 effective date of this act.

PART A

Definitions and conforming changes

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

LBD15950-01-8

1 Section 1. Section 4300 of the public health law, as added by chapter
2 466 of the laws of 1970, is amended to read as follows:

3 § 4300. Definitions. As used in this section, the following terms
4 shall have the following meanings:

5 1. "Bank or storage facility" or "bank" means a hospital, laboratory
6 or other facility licensed or approved under the laws of any state for
7 storage of human bodies or parts thereof, for use in medical education,
8 research, therapy, or transplantation ~~[to individuals]~~.

9 2. "Decedent" means a deceased individual of any age whose body or
10 part is or may be the source of an anatomical gift and includes a still-
11 born infant or fetus.

12 3. "Donor" means an individual ~~[who makes a gift of all or part of~~
13 ~~his]~~ whose body or part is the subject of an anatomical gift.

14 4. "Hospital" means a hospital licensed, accredited, or approved under
15 the laws of any state and includes a hospital operated by the United
16 States Government, a state, or a subdivision thereof, although not
17 required to be licensed under state laws.

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

21 6. "Person" means an individual, corporation, government or govern-
22 mental subdivision or agency, business trust, estate, trust, partnership
23 or association, or any other legal entity.

24 7. "Physician" or "surgeon" means a physician or surgeon licensed or
25 authorized to practice under the laws of any state.

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

29 9. "Reasonably available" means able to be contacted by a procurement
30 organization without undue effort and willing and able to act in a time-
31 ly manner consistent with existing medical criteria necessary for the
32 making of an anatomical gift.

33 10. "Domestic partner" means a person who, with respect to another
34 person:

35 (a) is formally a party in a domestic partnership or similar relation-
36 ship with the other person, entered into pursuant to the laws of the
37 United States or any state, local or foreign jurisdiction, or registered
38 as the domestic partner of the person with any registry maintained by
39 the employer of either party or any state, municipality, or foreign
40 jurisdiction; or

41 (b) is formally recognized as a beneficiary or covered person under
42 the other person's employment benefits or health insurance; or

43 (c) is dependent or mutually interdependent on the other person for
44 support, as evidenced by the totality of the circumstances indicating a
45 mutual intent to be domestic partners including but not limited to:
46 common ownership or joint leasing of real or personal property; common
47 householding, shared income or shared expenses; children in common;
48 signs of intent to marry or become domestic partners under paragraph (a)
49 or (b) of this subdivision; or the length of the personal relationship
50 of the persons. Each party to a domestic partnership shall be considered
51 to be the domestic partner of the other party. "Domestic partner" shall
52 not include a person who is related to the other person by blood in a
53 manner that would bar marriage to the other person in New York state.
54 "Domestic partner" shall also not include any person who is less than
55 eighteen years of age or who is the adopted child of the other person or

1 who is related by blood in a manner that would bar marriage in New York
2 state to a person who is the lawful spouse of the other person.

3 11. "Anatomical gift" or "gift" means a donation of all or part of a
4 human body to take effect after the donor's death for the purpose of
5 transplantation, therapy, research, or education.

6 12. "Document of gift" means an organ donor card, driver's license
7 authorization to make an anatomical gift, pursuant to paragraph (a) of
8 subdivision one of section five hundred four of the vehicle and traffic
9 law, authorization to make an anatomical gift pursuant to any of the
10 methods in subdivision five of section forty-three hundred ten of this
11 article, or any other written authorization for organ or tissue
12 donation. The term includes a statement or symbol on a driver's license,
13 identification card, or enrollment in a donor registry.

14 13. "Donee" means an individual or entity authorized to accept an
15 anatomical gift pursuant to forty-three hundred two of this article.

16 14. "Guardian" means a person appointed by a court to make decisions
17 regarding the support, care, education, health, or welfare of an indi-
18 vidual. The term does not include a guardian ad litem.

19 15. "Organ procurement organization" means a person designated by the
20 Secretary of the United States Department of Health and Human Services
21 as an organ procurement organization.

22 16. "Parent" means a parent whose parental rights have not been termi-
23 nated.

24 17. "Disinterested witness" means a witness other than the spouse,
25 child, parent, sibling, grandchild, grandparent, or guardian of the
26 individual who makes, amends, revokes, or refuses to make an anatomical
27 gift, or another adult who exhibited special care and concern for the
28 individual.

29 18. "Record" means information that is inscribed on a tangible medium
30 or that is stored in an electronic or other medium and is retrievable in
31 perceivable form.

32 19. "Procurement organization" means an eye bank, organ procurement
33 organization, or tissue bank.

34 20. "Eye bank" means a person that is licensed, accredited, or regu-
35 lated under federal or state law to engage in the recovery, screening,
36 testing, processing, storage, or distribution of human eyes or portions
37 of human eyes.

38 21. "Tissue bank" means a person that is licensed, accredited, or
39 regulated under federal or state law to solicit, retrieve, perform donor
40 selection and/or testing, preserve, transport, allocate, distribute,
41 acquire, process, store or arrange for the storage of human tissues for
42 transplantation, transfer, therapy, artificial insemination or implanta-
43 tion, including autogeneic procedures.

44 § 2. Subdivision 5 of section 4303 of the public health law is
45 REPEALED.

46 § 3. This act shall take effect immediately.

47 PART B

48 Changes in anatomical gift consent

49 Section 1. Section 4301 of the public health law, as amended by chap-
50 ter 348 of the laws of 2009, subdivision 1 as amended by chapter 248 of
51 the laws of 2016, is amended to read as follows:

52 § 4301. Persons who may execute an anatomical gift. 1. (a) Any indi-
53 vidual of sound mind and eighteen years of age or more may [~~give all or~~
54 ~~any part of his or her body~~] make an anatomical gift to take effect upon

1 ~~their death~~ for any purpose specified in section forty-three hundred two
2 of this article, [~~the gift to take effect upon death~~] limit an anatom-
3 ical gift to one or more of those purposes, or refuse to make an anatom-
4 ical gift. In any case where the donor has a properly executed [~~an~~
5 ~~organ donor card, driver's license authorization to make an anatomical~~
6 ~~gift, pursuant to paragraph (a) of subdivision one of section five~~
7 ~~hundred four of the vehicle and traffic law, registered in the New York~~
8 ~~state organ and tissue donor registry under section forty-three hundred~~
9 ~~ten of this article, or has otherwise given written authorization for~~
10 ~~organ or tissue donation,~~] document of gift, authorization for donation
11 shall not be rescinded [~~by an objection by a member of any of the class-~~
12 ~~es specified in paragraphs (a) through (h) of subdivision two of this~~
13 ~~section,~~] or amended by any other person except upon a showing that the
14 donor revoked the authorization pursuant to section forty-three hundred
15 five of this article.

16 (b) Any person who is sixteen or seventeen years of age and of sound
17 mind may [~~give all or any part of his or her body~~] make an anatomical
18 gift to take effect upon their death for any purpose specified in
19 section forty-three hundred two of this article, [~~the gift to take~~
20 ~~effect upon death~~] limit an anatomical gift to one or more of those
21 purposes, or refuse to make an anatomical gift. In any case where the
22 donor has a properly executed [~~an organ donor card, driver's license~~
23 ~~authorization to make an anatomical gift, pursuant to paragraph (a) of~~
24 ~~subdivision one of section five hundred four of the vehicle and traffic~~
25 ~~law, or has otherwise given written authorization for organ or tissue~~
26 ~~donation]~~ document of gift, notice of such gift shall be provided to the
27 donor's parents or [~~legal~~] guardians, and authorization for donation may
28 be rescinded or amended by an objection by a parent or [~~legal~~] guardian
29 of the donor at the time of death and prior to the recovery of any organ
30 or tissue if the donor is less than eighteen years of age. An anatomical
31 gift made by an individual more than sixteen years of age but less than
32 eighteen shall otherwise not be rescinded, except upon a showing that
33 the donor revoked the authorization pursuant to section forty-three
34 hundred five of this article. Upon the donor reaching the age of eigh-
35 teen, the donor's consent to donate his or her organs or tissue shall be
36 regarded as consent for authorization to make an anatomical gift pursu-
37 ant to paragraph (a) of this subdivision.

38 (c) In the absence of an express, contrary indication by the donor, an
39 anatomical gift of a part is neither a refusal to give other parts nor a
40 limitation on an individual's ability to make an anatomical gift under
41 subdivision two of section forty-three hundred one of this article.

42 2. [~~Any of the following persons, in the order of priority stated,~~
43 ~~may, when persons in prior classes are not reasonably available, will-~~
44 ~~ing, and able to act, at the time of death, and in the absence of actual~~
45 ~~notice of contrary indications by the decedent, or actual notice of~~
46 ~~opposition by a member of the same class or prior class specified in~~
47 ~~paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of this subdivision,~~
48 ~~or reason to believe that]~~ (a) In the absence of a gift made by the
49 donor under subdivision one of this section, and in the absence of actu-
50 al notice of contrary indications by the decedent, including religious
51 or moral objections, an anatomical gift [~~is contrary to the decedent's~~
52 ~~religious or moral beliefs, give all or any part~~] of the decedent's body
53 may be made by any member of the following classes of persons who is
54 reasonably available, in the order of priority listed, for any purpose
55 specified in section forty-three hundred two of this article:

1 ~~[(a)]~~ (i) the person designated as the decedent's health care agent
2 under article twenty-nine-C of this chapter, subject to any written
3 statement in the health care proxy form,

4 ~~[(b)]~~ (ii) the person designated as the decedent's agent in a written
5 instrument under article forty-two of this chapter, subject to any writ-
6 ten statement in the written instrument,

7 ~~[(c)]~~ (iii) the spouse, if not legally separated from the patient, or
8 the domestic partner,

9 ~~[(d)]~~ (iv) a son or daughter eighteen years of age or older,

10 ~~[(e)]~~ (v) either parent,

11 ~~[(f)]~~ (vi) a brother or sister eighteen years of age or older,

12 ~~[(g)]~~ (vii) adult grandchildren of the decedent,

13 (viii) a grandparent of the decedent,

14 (ix) an adult who exhibited special care and concern for the decedent,

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

16 or

17 ~~[(h)]~~ (xi) any other person authorized or under the obligation to
18 dispose of the body.

19 (b) If there is more than one member of a class listed in subparagraph
20 (iv), (vi), (vii) or (viii) of paragraph (a) of this subdivision enti-
21 ttled to make an anatomical gift, an anatomical gift may be made by a
22 member of the class unless that member or a person knows of an objection
23 by another member of the class. If an objection is known, the gift may
24 be made only by a majority of the members of the class who are reason-
25 ably available.

26 3. ~~[For the purposes of this section, "reasonably available" means~~
27 ~~that a person to be contacted can be contacted without undue effort and~~
28 ~~willing and able to act in a timely manner consistent with existing~~
29 ~~medical criteria necessary for the making of an anatomical gift.~~

30 4. ~~For the purposes of this section, "domestic partner" means a person~~
31 ~~who, with respect to another person:~~

32 ~~(a) is formally a party in a domestic partnership or similar relation-~~
33 ~~ship with the other person, entered into pursuant to the laws of the~~
34 ~~United States or any state, local or foreign jurisdiction, or registered~~
35 ~~as the domestic partner of the person with any registry maintained by~~
36 ~~the employer of either party or any state, municipality, or foreign~~
37 ~~jurisdiction; or~~

38 ~~(b) is formally recognized as a beneficiary or covered person under~~
39 ~~the other person's employment benefits or health insurance; or~~

40 ~~(c) is dependent or mutually interdependent on the other person for~~
41 ~~support, as evidenced by the totality of the circumstances indicating a~~
42 ~~mutual intent to be domestic partners including but not limited to:~~
43 ~~common ownership or joint leasing of real or personal property; common~~
44 ~~householding, shared income or shared expenses; children in common;~~
45 ~~signs of intent to marry or become domestic partners under paragraph (a)~~
46 ~~or (b) of this subdivision; or the length of the personal relationship~~
47 ~~of the persons.~~

48 ~~Each party to a domestic partnership shall be considered to be the~~
49 ~~domestic partner of the other party. "Domestic partner" shall not~~
50 ~~include a person who is related to the other person by blood in a manner~~
51 ~~that would bar marriage to the other person in New York state. "Domestic~~
52 ~~partner" shall also not include any person who is less than eighteen~~
53 ~~years of age or who is the adopted child of the other person or who is~~
54 ~~related by blood in a manner that would bar marriage in New York state~~
55 ~~to a person who is the lawful spouse of the other person.] An anatomical~~

1 gift may not be made by a person listed in subdivision two of this
2 section if:

- 3 (a) a person in a prior class is reasonably available;
4 (b) the person proposing to make an anatomical gift knows of a refusal
5 or contrary indications by the decedent, including that an anatomical
6 gift is contrary to the decedent's religious or moral beliefs; or
7 (c) the person proposing to make an anatomical gift knows of an
8 objection to making an anatomical gift by a member of the person's class
9 or a prior class.

10 4. Any gift by a person designated in subdivision two of this section
11 shall be by a document signed by him or her or made by his or her tele-
12 graphic, recorded telephonic, or other recorded message. Where a gift is
13 made under this subdivision, either: (a) the donor shall indicate in the
14 document or message that he or she has no actual notice of contrary
15 indications by the decedent and no reason to believe that an anatomical
16 gift is contrary to the decedent's religious or moral beliefs; or (b) an
17 agent of the federally designated organ procurement organization or of
18 the donee shall make reasonable effort to inquire of the donor or other-
19 wise determine that the donor has no actual notice of contrary indi-
20 cations by the decedent and no reason to believe that an anatomical gift
21 is contrary to the decedent's religious or moral beliefs.

22 5. The donee shall not accept the gift under the following circum-
23 stances:

24 (a) the donee has actual notice of contrary indication by the dece-
25 dent;

26 (b) where [~~the donor has not properly executed an organ donor card,~~
27 ~~driver's license authorization to make~~] an anatomical gift[, ~~pursuant to~~
28 ~~paragraph (a) of subdivision one of section five hundred four of the~~
29 ~~vehicle and traffic law, registered in the New York state organ and~~
30 ~~tissue donor registry under section forty three hundred ten of this~~
31 ~~article, or otherwise given written authorization for organ or tissue~~
32 ~~donation, or has revoked any such authorization, and the gift is opposed~~
33 ~~by a person or persons in the highest priority available of the classes~~
34 ~~specified in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) of~~
35 ~~subdivision two of~~] is not properly made pursuant to this section; or

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

38 6. A gift of all or part of a body authorizes any examination neces-
39 sary to assure medical acceptability of gift for the purposes intended.

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

43 8. The person who documents the making, amending or revoking of an
44 anatomical gift, acting reasonably and in good faith in accordance with
45 this article, may accept an anatomical gift under this article made by a
46 person who represents that he or she is entitled to consent to the
47 donation.

48 § 2. This act shall take effect on the one hundred eightieth day after
49 it shall have become a law; provided, however, that effective immediate-
50 ly, the commissioner of health shall make regulations and take other
51 actions reasonably necessary to implement this act on that date.

52 PART C

53 Changes in anatomical gift revocation and amendment

Section 1. Section 4305 of the public health law, as added by chapter 466 of the laws of 1970, is amended to read as follows:

§ 4305. ~~[Revocation]~~ Amendments or 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]~~ An individual who has created a document of gift may amend or revoke the gift by:

(a) ~~[the execution and delivery to the donee of a signed statement]~~ a record signed by the donor, or

(b) an oral statement of revocation made in the presence of two persons, ~~[communicated to the donee]~~ at least one of whom is a disinterested witness, or

(c) a later-executed document of gift that expressly amends or revokes a previous anatomical gift or portion of an anatomical gift, or

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

~~[(d)]~~ (e) a signed card or document, found on his or her person or in his or her effects.

2. (a) Subject to paragraphs (b) and (c) of this subdivision, an individual authorized to make an anatomical gift pursuant to subdivision two of section forty-three hundred one of this article shall revoke or amend such gift by:

(i) a record signed by the donor, or

(ii) an oral statement of revocation made in the presence of two persons, at least one of whom is a disinterested witness, or

(iii) a later-executed document of gift that expressly amends or revokes a previous anatomical gift or portion of an anatomical gift.

(b) If more than one member of a class listed in subparagraph (iv), (vi), (vii) or (viii) of paragraph (a) of subdivision two of section forty-three hundred one of this article is reasonably available, a gift made pursuant to subdivision two of section forty-three hundred one of this article may be amended only if a majority of the reasonably available members agree to the amending of the gift, or 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.

(c) A revocation 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.

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

~~[3-]~~ 4. 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.

5. In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift, either by the donor or another person specified in subdivision two of section forty-three hundred one of this article.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, the commissioner of health shall make regulations and take other actions reasonably necessary to implement this act on that date.

§ 3. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be

1 inconsistent with any federal law or regulation, that shall not affect
2 the validity or effectiveness of any other provision of this act, or of
3 any other application of any provision of this act, which can be given
4 effect without that provision or application; and to that end, the
5 provisions and applications of this act are severable.

6 § 4. This act shall take effect immediately; provided, however, that
7 the applicable effective dates of Parts A through C of this act shall be
8 as specifically set forth in the last sections of such Parts.