STATE OF NEW YORK

1342--B

Cal. No. 1123

2019-2020 Regular Sessions

IN SENATE

January 14, 2019

Introduced by Sen. RIVERA -- 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 -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

§ 2. This act enacts into law changes to the anatomical gift process. Each component is wholly contained within a Part identified as Parts A through C. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any

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

LBD03867-10-9

provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act," when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

PART A

Definitions and conforming changes

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

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

1. "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~~].

2. "Decedent" means a deceased individual of any age **whose body or part is or may be the source of an anatomical gift** and includes a stillborn infant or fetus.

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

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

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

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

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

9. "Reasonably available" means able to be contacted by a procurement organization 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.

10. "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.

11. "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.

12. "Document of gift" means 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, authorization to make an anatomical gift pursuant to any of the methods in subdivision five of section forty-three hundred ten of this article, or any other written authorization for organ or tissue donation. The term includes a statement or symbol on a driver's license, identification card, or enrollment in a donor registry.

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

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

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

16. "Parent" means a parent whose parental rights have not been terminated.

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

18. "Close friend" means any person, eighteen years of age or older, who is a close friend of the patient, or a relative of the patient other than a spouse, adult child, parent, brother, or sister, who has maintained regular contact with the patient as to be familiar with the patient's activities, health, and religious or moral beliefs.

19. "Refusal" means a record created under section forty-three hundred five of this article that expressly states an intent to bar other persons from making an anatomical gift.

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

21. "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

22. "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

23. "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to solicit, retrieve, perform donor

selection and/or testing, preserve, transport, allocate, distribute, acquire, process, store or arrange for the storage of human tissues for transplantation, transfer, therapy, artificial insemination or implantation, including autogeneic procedures.

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

§ 3. This act shall take effect immediately.

PART B

Changes in anatomical gift consent

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

§ 4301. Persons who may execute an anatomical gift. 1. (a) Any individual of sound mind and eighteen years of age or more may [~~give all or any part of his or her body~~] make an anatomical gift to take effect upon their death for any purpose specified in section forty-three hundred two of this article, [~~the gift to take effect upon death~~] limit an anatomical gift to one or more of those purposes, or refuse to make an anatomical gift. In any case where the donor has a 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,~~] document of gift, 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,~~] or amended by any other person except upon a showing that the donor revoked the authorization pursuant to section forty-three hundred five of this article.

(b) Any person who is sixteen or seventeen years of age and of sound mind may [~~give all or any part of his or her body~~] make an anatomical gift to take effect upon their death for any purpose specified in section forty-three hundred two of this article, [~~the gift to take effect upon death~~] limit an anatomical gift to one or more of those purposes, or refuse to make an anatomical gift. In any case where the donor has a 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, or has otherwise given written authorization for organ or tissue donation~~] document of gift, notice of such gift shall be provided to the donor's parents or [~~legal~~] guardians, and authorization for donation may be rescinded or amended by an objection by a parent or [~~legal~~] guardian of the donor at the time of death and prior to the recovery of any organ or tissue if the donor is less than eighteen years of age. An anatomical gift made by an individual more than sixteen years of age but less than eighteen shall otherwise not be rescinded, except upon a showing that the donor revoked the authorization pursuant to section forty-three hundred five of this article. Upon the donor reaching the age of eighteen, the donor's consent to donate his or her organs or tissue shall be regarded as consent for authorization to make an anatomical gift pursuant to paragraph (a) of this subdivision.

(c) In the absence of an express, contrary indication by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a

limitation on an individual's ability to make an anatomical gift under subdivision two of section forty-three hundred one of this article.

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~~] (a) In the absence of a gift made by the donor under subdivision one of this section, and in the absence of actual notice of contrary indications by the decedent, including religious or moral objections, an anatomical gift [~~is contrary to the decedent's religious or moral beliefs, give all or any part~~] of the decedent's body may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed, for any purpose specified in section forty-three hundred two of this article:

[~~(a)~~] (i) 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)~~] (ii) 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)~~] (iii) the spouse, if not legally separated from the patient, or the domestic partner,

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

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

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

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

(viii) a grandparent of the decedent,

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

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

(b) If there is more than one member of a class listed in subparagraph (iv), (vi), (vii) or (viii) of paragraph (a) 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 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 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.~~] An anatomical gift may not be made by a person listed in subdivision two of this section if:

(a) a person in a prior class is reasonably available; or

(b) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent, including that an anatomical gift is contrary to the decedent's religious or moral beliefs.

4. Any gift by a person designated in subdivision two of this section shall be by a document signed by him or her or made by his or her telegraphic, recorded telephonic, or other recorded message. Where a gift is made under this subdivision, either: (a) the donor shall indicate in the document or message that he or she has no actual notice of contrary indications by the decedent and no reason to believe that an anatomical gift is contrary to the decedent's religious or moral beliefs; or (b) an agent of the federally designated organ procurement organization or of the donee shall make reasonable effort to inquire of the donor or otherwise determine that the donor has no actual notice of contrary indications by the decedent and no reason to believe that an anatomical gift is contrary to the decedent's religious or moral beliefs.

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~~] is not properly made pursuant to 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. A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of gift for the purposes intended.

7. 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. 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.

§ 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.

PART C

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

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