STATE OF NEW YORK

7800--A

2019-2020 Regular Sessions

IN ASSEMBLY

May 23, 2019

Introduced by M. of A. GOTTFRIED, ORTIZ, PALMESANO, RAIA -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to definitions and conforming changes pertaining to anatomical gifts (Part A); to amend the public health law, in relation to changes in anatomical gift revocation and amendment; and to repeal certain provisions of such law relating thereto (Part B); to amend the public health law, in relation to uses and dispositions of anatomical gifts; and to repeal certain provisions of such law relating thereto (Part C); to amend the public health law, in relation to delivery of documents of gift (Part D); to amend the public health law, in relation to rights and duties of donees at death (Part E); to amend the public health law, in relation to interactions between advance directives and anatomical gifts (Part F); and to amend the public health law, in relation to prohibition of sales or purchase of human organs (Part G)

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 incorporate the amended provisions of the Uniform Anatomical Gift Act (UAGA) as drafted by the National Conference of Commissioners on Uniform State Laws to enhance the organ donation process. The UAGA was enacted in 1968 following the first successful heart transplant and was revised in 1987 and 2006 to clarify consent rules and other processes. While New York has made recent improvements to its organ donation registry and processes, it still faces a severe organ shortage. It is estimated that bringing New York's anatomical gift consent rules alone into agreement with the UAGA would result in increased numbers of organ donors and would save lives through transplantation. Provisions of this act should not be construed to interfere with a potential donor's recorded intent

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

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to make a whole body donation in instances where the potential donor's body is suitable for such donation at death, nor does the gift of a whole body preclude donation for transplant, unless such use is expressly refused by the donor or the authorizing party.

§ 2. Short title. This act shall be known and may be cited as the "New York Gift Act".

§ 3. This act enacts into law changes to the anatomical gift process. Each component is wholly contained within a Part identified as Parts A through G. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any 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. Sections four and five of this act set forth the severability and the general effective dates of this act, respectively.

PART A

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~~] article, the following terms shall have the following meanings:

1. [~~"Bank or storage facility" 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~~] "Anatomical gift" or "gift" means a donation of a whole body or part of a human body, to take effect after the donor's death, for the purpose of transplantation, therapy, research or education.

2. "Decedent" means a deceased individual of any age [~~and~~] whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant [~~or~~] and, subject to restrictions imposed by law other than this article, a fetus.

3. "Disinterested witness" means a witness other than the spouse, domestic partner, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or a close friend, or another adult who is related to the decedent by blood, marriage, or adoption.

4. "Document of gift" means an organ donor card, whole body 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 an anatomical gift. The term "document of gift" includes a statement on a driver's license, identification card, enrollment in a donor registry, or any other anatomical gift document valid pursuant to the laws of this or any other state.

5. "Domestic partner" has the same meaning as described in subdivision seven of section twenty-nine hundred ninety-four-a of this chapter.

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

7. "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.~~] 8. "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.

9. "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.

10. "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.~~] 11. "Human paired organ donation" means the donation and receipt of human organs under the following circumstances:

(a) An individual (referred to in this subdivision as the "first donor") desires to make a living donation of a human organ specifically to a particular patient (referred to in this subdivision as "first patient"), but such donor is biologically incompatible as a donor for such patient.

(b) A second individual (referred to in this subdivision as the "second donor") desires to make a living donation of a human organ specifically to a second particular patient (referred to in this subdivision as the "second patient"), but such donor is biologically incompatible as a donor for such patient.

(c) Subject to paragraph (d) of this subdivision, the first donor is biologically compatible as a donor of a human organ for the second patient, and the second donor is biologically compatible as a donor of a human organ for the first patient.

(d) If there is any additional donor-patient pair as described in paragraph (a) or (b) of this subdivision, each donor in the group of donor-patient pairs is biologically compatible as a donor of a human organ for a patient in such group.

(e) All donors and patients in the group of donor-patient pairs (whether two pairs, or more than two pairs) enter into a single agreement to donate and receive such human organs, respectively, according to such biological compatibility in the group.

(f) Other than as described in paragraph (e) of this subdivision, no valuable consideration is knowingly acquired, received, or otherwise transferred with respect to the human organs referred to in such paragraph.

12. "Non-transplant anatomic bank" means any person or facility that solicits, retrieves, performs donor selection and/or testing, preserves, transport, allocates, distributes, acquires, processes, stores, or arranges for the storage of non-transplant anatomic parts, including whole bodies, body segments, organs, or tissues from living or deceased donors, for education and/or research purposes specifically authorized by section forty-three hundred two of this article. The following shall not constitute a non-transplant anatomic bank:

(a) Any person or entity that stores non-transplant anatomic parts, except whole bodies and body segments, solely for purposes of research and/or education conducted by such person; provided the person or entity maintains on its premises a properly executed anatomical gift consent document, and

(i) such person or entity is a legal donee pursuant to section forty-three hundred two of this article and obtains all organs/tissues from a tissue bank or non-transplant anatomic bank licensed by the department; or

(ii) is a general hospital conducting pathology services or research on non-transplant anatomic parts including whole bodies, recovered from within the facility from a living or deceased source;

(b) Any person or entity whose activities within the state of New York are limited to distribution of non-transplant anatomic parts to a tissue bank or non-transplant anatomic bank licensed by the department;

(c) Any person or entity that uses prepared slides and/or human-derived stem cell lines for purposes of education and/or research; and

(d) An employee of the federal government, provided an anatomical gift consent document has been executed in accordance with section forty-three hundred one of this article.

13. "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.

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

15. "Part" of a body means and includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts". The term does not include the whole body.

[~~6.~~] 16. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

[~~7.~~] 17. "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

[~~8.~~] 18. "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

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

20. "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.

21. "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.

22. "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.

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

24. "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.

25. "Whole body" means the intact corporeal remains of an individual after the time of death.

26. "Whole body donor card" means a card or other writing indicating the donor's authorization to make an anatomical gift of a whole body to a non-transplant anatomic bank or other donee for purposes of education or research.

§ 2. This act shall take effect immediately.

PART B

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 this section.

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) an adult grandchild of the decedent,

(viii) a grandparent of the decedent,

(ix) a guardian of the person of the decedent at the time of his or her 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 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;

(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 authorizing party 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 efforts to inquire of the authorizing party or otherwise determine that the authorizing party 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. 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:

(i) the donor;

(ii) another person authorized to make the anatomical gift; or

(iii) another individual acting at the direction of the donor or other person authorized to make the anatomical gift if those individuals are physically unable to sign; 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 amends or revokes a previous anatomical gift or portion of an anatomical gift either expressly or by inconsistency; 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~~] the prospective donor's person or in [~~his~~] the prospective donor's effects; or

(f) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death.

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 may 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 amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(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 prospective donor or another person spec-

ified in subdivision two of section forty-three hundred one of this article.

§ 3. Article 43-A of the public health law is REPEALED.

§ 3-a. Subdivision 5 of section 4303 of the public health law is REPEALED.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

PART C

Section 1. Section 4302 of the public health law is REPEALED and a new section 4302 is added to read as follows:

§ 4302. Uses and dispositions of anatomical gifts. 1. All anatomical gifts made under this article may be made to the following persons named in the document of gift:

(a) a hospital; accredited medical school, dental school, college or university; organ procurement organization; non-transplant anatomic bank; or other appropriate person, for research or education;

(b) subject to the provisions of subdivision two of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of that part; if an anatomical gift to an individual under this paragraph cannot be transplanted into the individual, the part passes in accordance with subdivision six of this section in the absence of an express, contrary indication by the authorizing party making the anatomical gift; or

(c) an eye bank or tissue bank.

2. If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subdivision one of this section, but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

3. For the purposes of subdivision two of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

4. If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subdivision one of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subdivision six of this section.

5. If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor" or "body donor",

or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subdivision six of this section.

6. For purposes of subdivisions four, five and paragraph (b) of subdivision one of this section, the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

7. An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under paragraph (b) of subdivision one of this section, passes to the organ procurement organization as custodian of the organ.

8. If a potential donor has been referred to a procurement organization or tissue bank pursuant to state or federal law, and the procurement organization has determined that the gift is medically unsuitable for transplant, or to the extent that a non-transplant anatomical gift may still be honored after a gift has been made pursuant to a superseding document of gift, then the procurement organization shall make reasonable efforts to determine whether the donor has previously made a gift of his or her body or parts for education or research, and the procurement organization informed of such gift shall notify the non-transplant anatomic bank of the gift consistent with the donor's intent.

9. If an anatomical gift does not pass pursuant to subdivisions one, two, three, four, five, six or seven of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

10. A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section forty-three hundred one or forty-three hundred five of this article or if the person knows that the decedent made a refusal under section forty-three hundred one of this article that was not revoked. For purposes of this subdivision, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

11. Except as otherwise provided in paragraph (b) of subdivision one of this section, nothing in this section affects the allocation of organs for transplantation or therapy.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

PART D

Section 1. Section 4304 of the public health law, as added by chapter 466 of the laws of 1970, is amended to read as follows:

§ 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 or her to expedite the appropriate procedures immediately after death; however delivery is not neces-

sary 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.

§ 2. This act shall take effect immediately.

PART E

Section 1. Subdivisions 1, 3 and 4 of section 4306 of the public health law, subdivisions 1 and 3 as added by chapter 466 of the laws of 1970, and subdivision 4 as added by chapter 589 of the laws of 1990, are amended to read as follows:

1. The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he **or she** 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.

3. **(a)** A person who acts 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 or forty-three hundred ten of this article or a health care professional, or an agent or employee thereof, who or which documents, records, recovers, procures, obtains, or utilizes an organ or tissue in reasonable and good faith reliance on information provided to or contained 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.~~] **Any employee or agent of a federally designated organ procurement organization, eye bank or tissue bank acting pursuant to this article shall be held to the same standard of confidentiality as that imposed on employees of a hospital.**

§ 2. This act shall take effect immediately and shall apply only to acts occurring on or after such effective date. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

PART F

Section 1. The public health law is amended by adding a new section 4306-a to read as follows:

§ 4306-a. Advanced directives and health care proxies. 1. If a patient in a hospital has a declaration or advance health care directive or proxy document pursuant to article twenty-nine-C of this chapter, and terms of the declaration, directive or proxy document concerning life-sustaining treatment are in conflict with the express or implied terms of a potential anatomical gift with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and the prospective donor shall confer to resolve the conflict.

2. If such prospective donor is incapable of resolving the conflict, and the patient in such declaration, directive, or proxy document did not expressly reject being a donor, then the health care proxy acting under the prospective donor's declaration, directive, or proxy or, if none, a surrogate authorized to make health care decisions on behalf of the patient, in accordance with the provisions of article twenty-nine-CC of this chapter, shall act for the patient to resolve the conflict.

3. Such conflict must be resolved expeditiously. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor described in subdivision two of section forty-three hundred one of this article. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the patient if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

§ 2. The public health law is amended by adding a new section 4306-b to read as follows:

§ 4306-b. Withdrawal of life-sustaining treatment. This section applies in cases where a prospective donor who has made an anatomical gift or whose donation status has not been ascertained is in a hospital. The hospital shall not withdraw any measures that are necessary to maintain the medical suitability of the part until the procurement organization has had the opportunity to advise the applicable persons as set forth in section forty-three hundred one of this article of the option to make an anatomical gift, has documented or acted upon that decision, or has ascertained that the individual expressed a contrary intent. The procurement organization shall act expeditiously with respect to its responsibilities under this section.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

PART G

Section 1. Subdivision 1 of section 4307 of the public health law, as amended by chapter 362 of the laws of 2009, is amended to read as follows:

1. It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any [~~human organ~~] **part** 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~~] **part** 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 **or human paired organ donation**. Any person who violates this section shall be guilty of a class E felony.

§ 2. This act shall take effect immediately.

§ 4. 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.

§ 5. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through G of this act shall be as specifically set forth in the last section of such Parts.