STATE OF NEW YORK

6941

IN SENATE

January 6, 2020

Introduced by Sen. RIVERA -- 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 amend a chapter of the laws of 2019 amending the public health law relating to anatomical gifts, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, in relation to making technical corrections thereto

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

Section 1. Section 1 of a chapter of the laws of 2019, amending the public health law relating to anatomical gifts, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, is amended to read 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~~] **prospective** donor's recorded intent to make a whole body donation in instances where the [~~potential~~] **prospective** 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. Subdivisions 4, 11 and 12 of section 4300 of the public health law, as added by section 1 of part A of a chapter of the laws of 2019, amending the public health law relating to definitions and conforming

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

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changes pertaining to anatomical gifts, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, are amended to read as follows:

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 **or of any document of gift valid pursuant to the laws of any other country appearing on a list of countries maintained by the commissioner for such purpose and published on the department's website**.

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.

12. "Organ" shall have the same definition as in article forty-three-B of this chapter, but shall not be applied to heart valves for the purposes of this article.

§ 3. Subdivision 4 of section 4301 of the public health law, as added by section 1 of part B of a chapter of the laws of 2019, amending the public health law relating to changes in anatomical gift revocation and amendment, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, is amended to read as follows:

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.

§ 4. Section 4305 of the public health law, as amended by section 2 of part B of a chapter of the laws of 2019, amending the public health law relating to changes in anatomical gift revocation and amendment, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, is amended to read as follows:

§ 4305. Amendments or revocation of the gift. 1. An individual who has created a document of gift may **only** amend or revoke [~~the~~] **his or her** gift by:

(a) a record signed**, subsequently to the creation of the document of gift** by:

(i) [~~the donor~~] **such individual**;

(ii) another person authorized to make the anatomical gift **on behalf of such individual**; or

(iii) another [~~individual~~] **person** acting at the direction of [~~the donor~~] **such individual** or other person authorized to make the anatomical gift if [~~those individuals are physically~~] **such individual is** unable to sign; or

(b) an oral statement of revocation**, subsequent to the creation of the gift,** made **by such individual** in the presence of two persons, at least one of whom is a disinterested witness; or

(c) a later-executed document of gift made by such individual 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 made by such individual; or

(e) a signed card or document, found on [~~the prospective donor's~~] such individual's person or in [~~the prospective donor's~~] such individual's effects; or

(f) [~~the~~] such individual's will, created subsequently to the creation of the document of gift, whether or not the will is admitted to probate or invalidated after [~~the~~] such individual's death.

2. (a) Subject to paragraphs (b) and (c) of this subdivision, [~~an individual~~] a person authorized to make an anatomical gift on behalf of another individual 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~~] that individual; or

(ii) an oral statement of revocation, subsequent to the creation of the document of gift, made by that individual 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 made by that individual, 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~~] shall be amended or revoked 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~~] An amendment or 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 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.

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 not otherwise prohibited by the revocation or amendment, either by the prospective donor or another person specified in subdivision two of section forty-three hundred one of this article.

§ 5. The public health law is amended by adding a new article 43-A to read as follows:

ARTICLE 43-A
ANATOMICAL GIFT DUTIES OF HOSPITALS AND PROCUREMENT ORGANIZATIONS

Section 4351. Duties of hospital administrators, organ procurement organizations, banks or storage facilities.

§ 4351. Duties of hospital administrators, organ procurement organizations, eye banks or tissue banks. 1. (a) When the death of a person in a hospital has occurred or is imminent, the hospital shall contact the organ procurement organization in order to make a preliminary determination of the suitability of the person for organ donation, except where not required by paragraph (c) of this subdivision. If a hospital has ascertained that the individual expressed a desire not to receive life-sustaining treatment, pursuant to section forty-three hundred six-b of this chapter, the hospital shall make the organ procurement organization aware.

(b) Where contact with the organ procurement organization is not required under criteria developed regionally by the organ procurement organization subject to the approval of such criteria by the department, the hospital shall contact the appropriate eye bank or tissue bank, except where not required by paragraph (c) of this subdivision.

(c) The organ procurement organization, in consultation with the tissue procurement providers, may issue criteria under which a hospital shall not be required to make the contact under this subdivision.

(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 organ procurement organization of its choice of tissue procurement provider. If a hospital selects more than one eye bank or tissue bank, it may specify a rotation of referrals for purposes of tissue procurement.

2. Where the organ procurement organization, eye bank or tissue bank is contacted, it shall, in consultation with the hospital, after appropriate medical screening (which may include serological testing if applicable) determine suitability for organ, eye and tissue donation, as appropriate. Where an organ procurement organization is contacted, it shall contact the appropriate eye bank or tissue bank with respect to suitability for eye or tissue donation.

§ 6. Subdivisions 5 and 8 of section 4302 of the public health law, as added by section 1 of part C of a chapter of the laws of 2019, amending the public health law relating to uses and dispositions of anatomical gifts, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, are amended to read as follows:

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.

8. If a [~~potential~~] **prospective** 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.

§ 7. Section 4304 of the public health law, as amended by section 1 of part D of a chapter of the laws of 2019, amending the public health law

relating to delivery of documents of gift, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, 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 a copy [~~thereof~~] **of the executed document**, may be delivered to him or her to expedite the appropriate procedures immediately after death; however delivery is not necessary to the validity of the gift. On request of an interested party upon or after the donor's death, the person in possession shall produce the document for examination.

§ 8. Subdivisions 1, 3 and 4 of section 4306 of the public health law, as amended by section 1 of part E of a chapter of the laws of 2019, amending the public health law relating to rights and duties of donees at death, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, 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~~] **the donee** 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) **(i)** A person who acts in good faith in accord with the terms of this article or with the anatomical gift laws of another [~~jurisdiction~~] **state,** is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act.

(ii) A person who acts in good faith in accord with the anatomical gift laws of another country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act provided that:

(A) such country has anatomical gift laws similar in requirements and effects to the anatomical gift laws of this state;

(B) such country appears on a list of such countries promulgated as a regulation by the department for such purpose; and

(C) such country appeared on such list at the time of such 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~~] **the person** is **an authorized person under section forty-three hundred one of this article and 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. Any employee or agent of [~~a federally designated~~] **an** 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.

§ 9. Subdivision 1 of section 4306-a of the public health law, as added by section 1 of part F of a chapter of the laws of 2019, amending the public health law relating to interactions between advance direc-

tives and anatomical gifts, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, is amended to read as follows:

1. If a [~~patient~~] **prospective donor** 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. **For purposes of this section, an advance directive shall mean a written or oral instruction by the adult patient relating to the provision of health care to the patient when an adult becomes incapacitated, including but not limited to a health care proxy, a consent to the issuance of an order not to resuscitate or other orders for life-sustaining treatment recorded in a patient's medical record, or a legally-recognized statement of wishes or beliefs.**

§ 10. Subdivision 1 of section 4307 of the public health law, as amended by section 1 of part G of a chapter of the laws of 2019, amending the public health law relating to prohibition of sales or purchase of human organs, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, 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 part for use in human transplantation. The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a part or the expenses of travel, housing, and lost wages incurred by the donor of a human [~~organ~~] **part** in connection with the donation of the [~~organ or human paired organ~~] **part or living** donation. Any person who violates this section shall be guilty of a class E felony.

§ 11. This act shall take effect immediately; provided, however, that sections one through ten of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2019, amending the public health law relating to definitions and conforming changes pertaining to anatomical gifts, as proposed in legislative bills numbers S. 6000-A and A. 7800-A, takes effect.