

1 HB476
2 97368-2
3 By Representative Bentley
4 RFD: Health
5 First Read: 19-FEB-08

1
2 ENROLLED, An Act,

3 Relating to the Alabama Uniform Anatomical Gift Act;
4 to create the Revised Uniform Anatomical Gift Act; to specify
5 the persons who may make anatomical gifts; to provide for the
6 making, amending, revoking, and refusal of anatomical gifts by
7 an individual and by other persons; for persons who may become
8 donees and purposes for which anatomical gifts may be made and
9 persons that may receive anatomical gifts; for search and
10 notification; for delivery of document of gift; for rights and
11 duties of procurement organizations and others; for
12 coordination of procurement and use; for the prohibition of
13 the sale or purchase of parts and other prohibited acts;
14 criminal penalties for violations; immunity; for a donor
15 registry; for effects of anatomical gifts on advance health
16 care directives; for cooperation between coroners, medical
17 examiners, district attorney, or local health officials and
18 procurement organizations; for facilitation of anatomical
19 gifts from a decedent whose body is under jurisdiction of the
20 coroner or medical examiner; for application and construction;
21 to repeal Sections 22-19-50 to 22-19-59.7, inclusive, of the
22 Code of Alabama 1975; and in connection therewith would have
23 as its purpose or effect the requirement of a new or increased
24 expenditure of local funds within the meaning of Amendment 621
25 of the Constitution of Alabama of 1901, now appearing as

1 Section 111.05 of the Official ReCompilation of the
2 Constitution of Alabama of 1901, as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Article 9 of Chapter 19 of Title 22 is
5 added to the Code of Alabama 1975, to read as follows:

6 Article 9. Revised Uniform Anatomical Gift Act.

7 §22-19-160. Short Title. This article may be cited
8 as the Revised Uniform Anatomical Gift Act.

9 §22-19-161. Definitions. In this article:

10 (1) "Adult" means an individual who is at least 18
11 years of age.

12 (2) "Agent" means an individual:

13 (A) authorized to make health care decisions on the
14 principal's behalf by a power of attorney for health care; or

15 (B) expressly authorized to make an anatomical gift
16 on the principal's behalf by any other record signed by the
17 principal.

18 (3) "Anatomical gift" means a donation of all or
19 part of a human body to take effect after the donor's death
20 for the purpose of transplantation, therapy, research, or
21 education.

22 (4) "Coroner" means an elected or appointed official
23 who determines, with the assistance of other forensic
24 scientists and investigators, the cause, manner, and
25 circumstances surrounding death.

1 (5) "Decedent" means a deceased individual whose
2 body or part is or may be the source of an anatomical gift.
3 The term includes a stillborn infant and, subject to
4 restrictions imposed by law other than this article, a fetus.

5 (6) "Disinterested witness" means a witness other
6 than the spouse, child, parent, sibling, grandchild,
7 grandparent, or guardian of the individual who makes, amends,
8 revokes, or refuses to make an anatomical gift, or another
9 adult who exhibited special care and concern for the
10 individual. The term does not include a person to which an
11 anatomical gift could pass under Section 22-19-170.

12 (7) "District attorney" means a constitutional
13 officer elected by the qualified electors of those counties in
14 each judicial circuit.

15 (8) "Document of gift" means a donor card or other
16 record used to make an anatomical gift. The term includes a
17 statement or symbol on a driver's license, identification
18 card, or donor registry.

19 (9) "Donor" means an individual whose body or part
20 is the subject of an anatomical gift.

21 (10) "Donor registry" means a database that contains
22 records of anatomical gifts and amendments to or revocations
23 of anatomical gifts.

24 (11) "Driver's license" means a license or permit
25 issued by the Department of Public Safety to operate a

1 vehicle, whether or not conditions are attached to the license
2 or permit.

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

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

11 (14) "Hospital" means a facility licensed,
12 accredited, or approved as a hospital under the provisions of
13 Article 2, Chapter 21, Title 22 or a facility operated as a
14 hospital by the United States government.

15 (15) "Identification card" means an identification
16 card issued by the Department of Public Safety.

17 (16) "Know" means to have actual knowledge.

18 (17) "Local public health official" means a
19 physician acting in the capacity as an area health officer,
20 local health officer, or county health officer.

21 (18) "Medical examiner" means a licensed physician
22 who determines the cause, manner, and circumstances
23 surrounding death with other forensic scientists and
24 investigators.

1 (19) "Minor" means an individual who is under 18
2 years of age.

3 (20) "Organ procurement organization" means a person
4 designated by the Secretary of the United States Department of
5 Health and Human Services as an organ procurement
6 organization.

7 (21) "Parent" means a parent whose parental rights
8 have not been terminated.

9 (22) "Part" means an organ, an eye, or tissue of a
10 human being. The term does not include the whole body.

11 (23) "Pathologist" means a licensed physician who is
12 certified in anatomic or anatomic and clinical pathology by
13 the American Board of Pathology or employed by the Alabama
14 Department of Forensic Sciences.

15 (24) "Person" means an individual, corporation,
16 business trust, estate, trust, partnership, limited liability
17 company, association, joint venture, public corporation,
18 government or governmental subdivision, agency, or
19 instrumentality, or any other legal or commercial entity.

20 (25) "Physician" means an individual licensed by the
21 Medical Licensure Commission of Alabama and authorized to
22 practice medicine and surgery or osteopathy and surgery.

23 (26) "Procurement organizations" means an eye bank,
24 organ procurement organization, and/or tissue bank.

1 (27) "Prospective donor" means an individual who is
2 dead or near death and has been determined by a procurement
3 organization to have a part that could be medically suitable
4 for transplantation, therapy, research, or education. The term
5 does not include an individual who has made a refusal.

6 (28) "Reasonably available" means able to be
7 contacted by a procurement organization without undue effort
8 and willing and able to act in a timely manner consistent with
9 existing medical criteria necessary for the making of an
10 anatomical gift.

11 (29) "Recipient" means an individual into whose body
12 a decedent's part has been or is intended to be transplanted.

13 (30) "Record" means information that is inscribed on
14 a tangible medium or that is stored in an electronic or other
15 medium and is retrievable in perceivable form.

16 (31) "Refusal" means a record created under Section
17 22-19-166 that expressly states an intent to bar other persons
18 from making an anatomical gift of an individual's body or
19 part.

20 (32) "Sign" means, with the present intent to
21 authenticate or adopt a record:

22 (A) to execute or adopt a tangible symbol; or

23 (B) to attach to or logically associate with the
24 record an electronic symbol, sound, or process.

1 (33) "State" means a state of the United States, the
2 District of Columbia, Puerto Rico, the United States Virgin
3 Islands, or any territory or insular possession subject to the
4 jurisdiction of the United States.

5 (34) "Surgeon's assistant" means an individual
6 licensed and certified as a surgeon's assistant by the State
7 Board of Medical Examiners to remove or process a part.

8 (35) "Technician" means an individual determined to
9 be qualified to remove or process parts by an appropriate
10 organization that is licensed, accredited, or regulated under
11 federal or state law. The term includes an enucleator.

12 (36) "Tissue" means a portion of the human body
13 other than an organ or an eye. The term does not include blood
14 unless the blood is donated for the purpose of research or
15 education.

16 (37) "Tissue bank" means a person that is licensed,
17 accredited, or regulated under federal or state law to engage
18 in the recovery, screening, testing, processing, storage, or
19 distribution of tissue.

20 (38) "Transplant hospital" means a hospital that
21 furnishes organ transplants and other medical and surgical
22 specialty services required for the care of transplant
23 patients.

24 (39) "Will" means a disposition of real and personal
25 property to take effect after the death of a testator.

1 §22-19-162. Applicability. This article applies to
2 an anatomical gift or amendment to, revocation of, or refusal
3 to make an anatomical gift, whenever made.

4 §22-19-163. Who May Make Anatomical Gift Before
5 Donor's Death. Subject to Section 22-19-167, an anatomical
6 gift of a donor's body or part may be made during the life of
7 the donor for the purpose of transplantation, therapy,
8 research, or education in the manner provided in Section
9 22-19-164 by:

10 (1) the donor, if the donor is an adult or if the
11 donor is a minor and is:

12 (A) emancipated; or

13 (B) authorized under state law to apply for a
14 driver's license because the donor is at least 16 years of
15 age;

16 (2) an agent of the donor, unless the power of
17 attorney for health care or other record prohibits the agent
18 from making an anatomical gift;

19 (3) a parent of the donor, if the donor is an
20 unemancipated minor; or

21 (4) the donor's guardian.

22 §22-19-164. Manner of Making Anatomical Gift Before
23 Donor's Death.

24 (a) A donor may make an anatomical gift:

1 (1) by authorizing a statement or symbol indicating
2 that the donor has made an anatomical gift to be imprinted on
3 the donor's driver's license or identification card;

4 (2) in a will;

5 (3) during a terminal illness or injury of the
6 donor, by any form of communication addressed to at least two
7 adults, at least one of whom is a disinterested witness; or

8 (4) as provided in subsection (b).

9 (b) A donor or other person authorized to make an
10 anatomical gift under Section 22-19-163 may make a gift by a
11 donor card or other record signed by the donor or other person
12 making the gift or by authorizing that a statement or symbol
13 indicating that the donor has made an anatomical gift be
14 included on a donor registry. If the donor or other person is
15 physically unable to sign a record, the record may be signed
16 by another individual at the direction of the donor or other
17 person and must:

18 (1) be witnessed by at least two adults, at least
19 one of whom is a disinterested witness, who have signed at the
20 request of the donor or the other person; and

21 (2) state that it has been signed and witnessed as
22 provided in subdivision (1).

23 (c) Revocation, suspension, expiration, or
24 cancellation of a driver's license or identification card upon

1 which an anatomical gift is indicated does not invalidate the
2 gift.

3 (d) An anatomical gift made by will takes effect
4 upon the donor's death whether or not the will is probated.
5 Invalidation of the will after the donor's death does not
6 invalidate the gift.

7 §22-19-165. Amending or Revoking Anatomical Gift
8 Before Donor's Death.

9 (a) Subject to Section 22-19-167, a donor or other
10 person authorized to make an anatomical gift under Section
11 22-19-163 may amend or revoke an anatomical gift by:

12 (1) a record signed by:

13 (A) the donor;

14 (B) the other person; or

15 (C) subject to subsection (b), another individual
16 acting at the direction of the donor or the other person if
17 the donor or other person is physically unable to sign; or

18 (2) a later-executed document of gift that amends or
19 revokes a previous anatomical gift or portion of an anatomical
20 gift, either expressly or by inconsistency.

21 (b) A record signed pursuant to subsection (a) (1) (C)
22 must:

23 (1) be witnessed by at least two adults, at least
24 one of whom is a disinterested witness, who have signed at the
25 request of the donor or the other person; and

1 (2) state that it has been signed and witnessed as
2 provided in subdivision (1).

3 (c) Subject to Section 22-19-167, a donor or other
4 person authorized to make an anatomical gift under Section
5 22-19-163 may revoke an anatomical gift by the destruction or
6 cancellation of the document of gift, or the portion of the
7 document of gift used to make the gift, with the intent to
8 revoke the gift.

9 (d) A donor may amend or revoke an anatomical gift
10 that was not made in a will by any form of communication
11 during a terminal illness or injury addressed to at least two
12 adults, at least one of whom is a disinterested witness.

13 (e) A donor who makes an anatomical gift in a will
14 may amend or revoke the gift in the manner provided for
15 amendment or revocation of wills or as provided in subsection
16 (a).

17 §22-19-166. Refusal to Make Anatomical Gift; Effect
18 of Refusal.

19 (a) An individual may refuse to make an anatomical
20 gift of the individual's body or part by:

21 (1) a record signed by:

22 (A) the individual; or

23 (B) subject to subsection (b), another individual
24 acting at the direction of the individual if the individual is
25 physically unable to sign;

1 (2) the individual's will, whether or not the will
2 is admitted to probate or invalidated after the individual's
3 death; or

4 (3) any form of communication made by the individual
5 during the individual's terminal illness or injury addressed
6 to at least two adults, at least one of whom is a
7 disinterested witness.

8 (b) A record signed pursuant to subsection (a) (1) (B)
9 must:

10 (1) be witnessed by at least two adults, at least
11 one of whom is a disinterested witness, who have signed at the
12 request of the individual; and

13 (2) state that it has been signed and witnessed as
14 provided in subdivision (1).

15 (c) An individual who has made a refusal may amend
16 or revoke the refusal:

17 (1) in the manner provided in subsection (a) for
18 making a refusal;

19 (2) by subsequently making an anatomical gift
20 pursuant to Section 22-19-164 that is inconsistent with the
21 refusal; or

22 (3) by destroying or canceling the record evidencing
23 the refusal, or the portion of the record used to make the
24 refusal, with the intent to revoke the refusal.

1 (d) Except as otherwise provided in Section
2 22-19-167(h), in the absence of an express, contrary
3 indication by the individual set forth in the refusal, an
4 individual's unrevoked refusal to make an anatomical gift of
5 the individual's body or part bars all other persons from
6 making an anatomical gift of the individual's body or part.

7 §22-19-167. Preclusive Effect of Anatomical Gift,
8 Amendment, or Revocation.

9 (a) Except as otherwise provided in subsection (g)
10 and subject to subsection (f), in the absence of an express,
11 contrary indication by the donor, a person other than the
12 donor is barred from making, amending, or revoking an
13 anatomical gift of a donor's body or part if the donor made an
14 anatomical gift of the donor's body or part under Section
15 22-19-164 or an amendment to an anatomical gift of the donor's
16 body or part under Section 22-19-165.

17 (b) A donor's revocation of an anatomical gift of
18 the donor's body or part under Section 22-19-165 is not a
19 refusal and does not bar another person specified in Section
20 22-19-163 or 22-19-168 from making an anatomical gift of the
21 donor's body or part under Section 22-19-164 or 22-19-169.

22 (c) If a person other than the donor makes an
23 unrevoked anatomical gift of the donor's body or part under
24 Section 22-19-164 or an amendment to an anatomical gift of the
25 donor's body or part under Section 22-19-165, another person

1 may not make, amend, or revoke the gift of the donor's body or
2 part under Section 22-19-169.

3 (d) A revocation of an anatomical gift of a donor's
4 body or part under Section 22-19-165 by a person other than
5 the donor does not bar another person from making an
6 anatomical gift of the body or part under Section 22-19-164 or
7 22-19-169.

8 (e) In the absence of an express, contrary
9 indication by the donor or other person authorized to make an
10 anatomical gift under Section 22-19-163, an anatomical gift of
11 a part is neither a refusal to give another part nor a
12 limitation on the making of an anatomical gift of another part
13 at a later time by the donor or another person.

14 (f) In the absence of an express, contrary
15 indication by the donor or other person authorized to make an
16 anatomical gift under Section 22-19-163, an anatomical gift of
17 a part for one or more of the purposes set forth in Section
18 22-19-163 is not a limitation on the making of an anatomical
19 gift of the part for any of the other purposes by the donor or
20 any other person under Section 22-19-164 or 22-19-169.

21 (g) If a donor who is an unemancipated minor dies, a
22 parent of the donor who is reasonably available may revoke or
23 amend an anatomical gift of the donor's body or part.

1 (h) If an unemancipated minor who signed a refusal
2 dies, a parent of the minor who is reasonably available may
3 revoke the minor's refusal.

4 §22-19-168. Who May Make Anatomical Gift of
5 Decedent's Body or Part.

6 (a) Subject to subsections (b) and (c) and unless
7 barred by Section 22-19-166 or 22-19-167, an anatomical gift
8 of a decedent's body or part for purpose of transplantation,
9 therapy, research, or education may be made by any member of
10 the following classes of persons who is reasonably available,
11 in the order of priority listed:

12 (1) an agent of the decedent at the time of death
13 who could have made an anatomical gift under Section
14 22-19-163(2) immediately before the decedent's death;

15 (2) the spouse of the decedent;

16 (3) adult children of the decedent;

17 (4) parents of the decedent;

18 (5) adult siblings of the decedent;

19 (6) adult grandchildren of the decedent;

20 (7) grandparents of the decedent;

21 (8) an adult who exhibited special care and concern
22 for the decedent;

23 (9) the persons who were acting as the guardians of
24 the person of the decedent at the time of death; and

1 (10) any other person having the authority to
2 dispose of the decedent's body.

3 (b) If there is more than one member of a class
4 listed in subsection (a) (1), (3), (4), (5), (6), (7), or (9)
5 entitled to make an anatomical gift, an anatomical gift may be
6 made by a member of the class unless that member or a person
7 to which the gift may pass under Section 22-19-170 knows of an
8 objection by another member of the class. If an objection is
9 known, the gift may be made only by a majority of the members
10 of the class who are reasonably available.

11 (c) A person may not make an anatomical gift if, at
12 the time of the decedent's death, a person in a prior class
13 under subsection (a) is reasonably available to make or to
14 object to the making of an anatomical gift.

15 §22-19-169. Manner of Making, Amending, or Revoking
16 Anatomical Gift of Decedent's Body or Part.

17 (a) A person authorized to make an anatomical gift
18 under Section 22-19-168 may make an anatomical gift by a
19 document of gift signed by the person making the gift or by
20 that person's oral communication that is electronically
21 recorded or is contemporaneously reduced to a record and
22 signed by the individual receiving the oral communication.

23 (b) Subject to subsection (c), an anatomical gift by
24 a person authorized under Section 22-19-168 may be amended or
25 revoked orally or in a record by any member of a prior class

1 who is reasonably available. If more than one member of the
2 prior class is reasonably available, the gift made by a person
3 authorized under Section 22-19-168 may be:

4 (1) amended only if a majority of the reasonably
5 available members agree to the amending of the gift; or

6 (2) revoked only if a majority of the reasonably
7 available members agree to the revoking of the gift or if they
8 are equally divided as to whether to revoke the gift.

9 (c) A revocation under subsection (b) is effective
10 only if, before an incision has been made to remove a part
11 from the donor's body or before invasive procedures have begun
12 to prepare the recipient, the procurement organization,
13 transplant hospital, or physician, surgeon, surgeon's
14 assistant, certified procurement transplant coordinator
15 (certified by the Alabama Organ Center), tissue recovery
16 technician (certified by the Alabama Organ Center), or
17 technician certified by the Eye Bank after completing training
18 according to the medical standards of the Eye Bank Association
19 of America to carry out the appropriate procedures knows of
20 the revocation.

21 §22-19-170. Persons that May Receive Anatomical
22 Gift; Purpose of Anatomical Gift.

23 (a) An anatomical gift may be made to the following
24 persons named in the document of gift:

1 (1) a hospital; accredited medical school, dental
2 school, college, or university; organ procurement
3 organization; or other appropriate person, for research or
4 education;

5 (2) subject to subsection (b), an individual
6 designated by the person making the anatomical gift if the
7 individual is the recipient of the part;

8 (3) an eye bank or tissue bank.

9 (b) If an anatomical gift to an individual under
10 subsection (a) (2) cannot be transplanted into the individual,
11 the part passes in accordance with subsection (g) in the
12 absence of an express, contrary indication by the person
13 making the anatomical gift.

14 (c) If an anatomical gift of one or more specific
15 parts or of all parts is made in a document of gift that does
16 not name a person described in subsection (a) but identifies
17 the purpose for which an anatomical gift may be used, the
18 following rules apply:

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

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

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

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

8 (d) For the purpose of subsection (c), if there is
9 more than one purpose of an anatomical gift set forth in the
10 document of gift but the purposes are not set forth in any
11 priority, the gift must be used for transplantation or
12 therapy, if suitable. If the gift cannot be used for
13 transplantation or therapy, the gift may be used for research
14 or education.

15 (e) If an anatomical gift of one or more specific
16 parts is made in a document of gift that does not name a
17 person described in subsection (a) and does not identify the
18 purpose of the gift, the gift may be used only for
19 transplantation or therapy, and the gift passes in accordance
20 with subsection (g).

21 (f) If a document of gift specifies only a general
22 intent to make an anatomical gift by words such as "donor,"
23 "organ donor," or "body donor," or by a symbol or statement of
24 similar import, the gift may be used only for transplantation

1 or therapy, and the gift passes in accordance with subsection
2 (g).

3 (g) For purposes of subsections (b), (e), and (f)
4 the following rules apply:

5 (1) If the part is an eye, the gift passes to the
6 appropriate eye bank.

7 (2) If the part is tissue, the gift passes to the
8 appropriate tissue bank.

9 (3) If the part is an organ, the gift passes to the
10 appropriate organ procurement organization as custodian of the
11 organ.

12 (h) An anatomical gift of an organ for
13 transplantation or therapy, other than an anatomical gift
14 under subsection (a)(2), passes to the organ procurement
15 organization as custodian of the organ.

16 (i) If an anatomical gift does not pass pursuant to
17 subsections (a) through (h) or the decedent's body or part is
18 not used for transplantation, therapy, research, or education,
19 custody of the body or part passes to the person under
20 obligation to dispose of the body or part.

21 (j) A person may not accept an anatomical gift if
22 the person knows that the gift was not effectively made under
23 Section 22-19-164 or 22-19-169 or if the person knows that the
24 decedent made a refusal under Section 22-19-166 that was not
25 revoked. For purposes of this subsection, if a person knows

1 that an anatomical gift was made on a document of gift, the
2 person is deemed to know of any amendment or revocation of the
3 gift or any refusal to make an anatomical gift on the same
4 document of gift.

5 (k) Except as otherwise provided in subsection
6 (a) (2), nothing in this article affects the allocation of
7 organs for transplantation or therapy.

8 §22-19-171. Search and Notification.

9 (a) The following persons shall make a reasonable
10 search of an individual who the person reasonably believes is
11 dead or near death for a document of gift or other information
12 identifying the individual as a donor or as an individual who
13 made a refusal:

14 (1) a law enforcement officer, firefighter,
15 paramedic, or other emergency rescuer finding the individual;
16 and

17 (2) if no other source of the information is
18 immediately available, a hospital, as soon as practical after
19 the individual's arrival at the hospital.

20 (b) If a document of gift or a refusal to make an
21 anatomical gift is located by the search required by
22 subsection (a) (1) and the individual or deceased individual to
23 whom it relates is taken to a hospital, the person responsible
24 for conducting the search shall send the document of gift or
25 refusal to the hospital.

1 (c) A person is not subject to criminal or civil
2 liability for failing to discharge the duties imposed by this
3 section but may be subject to administrative sanctions.

4 §22-19-172. Delivery of Document of Gift not
5 Required; Right to Examine.

6 (a) A document of gift need not be delivered during
7 the donor's lifetime to be effective.

8 (b) Upon or after an individual's death, a person in
9 possession of a document of gift or a refusal to make an
10 anatomical gift with respect to the individual shall allow
11 examination and copying of the document of gift or refusal by
12 a person authorized to make or object to the making of an
13 anatomical gift with respect to the individual or by a person
14 to which the gift could pass under Section 22-19-170.

15 §22-19-173. Rights and Duties of Procurement
16 Organization and Others.

17 (a) When a hospital refers an individual at or near
18 death to a procurement organization, the organization shall
19 make a reasonable search of the records of the Department of
20 Public Safety and any donor registry that it knows exists for
21 the geographical area in which the individual resides to
22 ascertain whether the individual has made an anatomical gift.

23 (b) A procurement organization must be allowed
24 reasonable access to information in the records of the

1 Department of Public Safety to ascertain whether an individual
2 at or near death is a donor.

3 (c) When a hospital refers an individual at or near
4 death to a procurement organization, the organization may
5 conduct any reasonable examination necessary to ensure the
6 medical suitability of a part that is or could be the subject
7 of an anatomical gift for transplantation, therapy, research,
8 or education from a donor or a prospective donor. During the
9 examination period, measures necessary to ensure the medical
10 suitability of the part may not be withdrawn unless the
11 hospital or procurement organization knows that the individual
12 expressed a contrary intent.

13 (d) Unless prohibited by law other than this
14 article, at any time after a donor's death, the person to
15 which a part passes under Section 22-19-170 may conduct any
16 reasonable examination necessary to ensure the medical
17 suitability of the body or part for its intended purpose.

18 (e) Unless prohibited by law other than this
19 article, an examination under subsection (c) or (d) may
20 include an examination of all medical and dental records of
21 the donor or prospective donor.

22 (f) Upon the death of a minor who was a donor or had
23 signed a refusal, unless a procurement organization knows the
24 minor is emancipated, the procurement organization shall
25 conduct a reasonable search for the parents of the minor and

1 provide the parents with an opportunity to revoke or amend the
2 anatomical gift or revoke the refusal.

3 (g) Upon referral by a hospital under subsection
4 (a), a procurement organization shall make a reasonable search
5 for any person listed in Section 22-19-168 having priority to
6 make an anatomical gift on behalf of a prospective donor. If a
7 procurement organization receives information that an
8 anatomical gift to any other person was made, amended, or
9 revoked, it shall promptly advise the other person of all
10 relevant information.

11 (h) Subject to Sections 22-19-170(i) and 22-19-182,
12 the rights of the person to which a part passes under Section
13 22-19-170 are superior to the rights of all others with
14 respect to the part. The person may accept or reject an
15 anatomical gift in whole or in part. Subject to the terms of
16 the document of gift and this article, a person that accepts
17 an anatomical gift of an entire body may allow embalming,
18 burial, or cremation, and use of remains in a funeral service.
19 If the gift is of a part, the person to which the part passes
20 under Section 22-19-170, upon the death of the donor and
21 before embalming, burial, or cremation, shall cause the part
22 to be removed without unnecessary mutilation.

23 (i) Neither the physician who attends the decedent
24 at death nor the physician who determines the time of the

1 decedent's death may participate in the procedures for
2 removing or transplanting a part from the decedent.

3 (j) The removal will be by a physician, surgeon,
4 surgeon's assistant, tissue recovery technician certified by
5 the Alabama Organ Center after completing the training of the
6 Alabama Organ Center according to the medical standards of the
7 American Association of Tissue Banks or a certified
8 procurement transplant coordinator certified by completing the
9 training of the Alabama Organ Center and the American Board of
10 Transplant Coordinators; but in the case of eyes, by a
11 technician certified by the Alabama Eye Bank after completing
12 training according to the medical standards of the Eye Bank
13 Association of America, may remove any donated eyes or parts
14 of eyes, after determination of death by a physician or
15 surgeon.

16 §22-19-174. Coordination of Procurement and Use.

17 Each hospital in this state shall enter into
18 agreements or affiliations with procurement organizations for
19 coordination of procurement and use of anatomical gifts.

20 §22-19-175. Sale or Purchase of Parts Prohibited.

21 (a) Except as otherwise provided in subsection (b),
22 a person, that for valuable consideration, knowingly purchases
23 or sells a part for transplantation or therapy if removal of a
24 part from an individual is intended to occur after the
25 individual's death commits a Class C felony.

1 (b) A person may charge a reasonable amount for the
2 removal, processing, preservation, quality control, storage,
3 transportation, implantation, or disposal of a part.

4 §22-19-176. Other Prohibited Acts.

5 A person that, in order to obtain a financial gain,
6 intentionally falsifies, forges, conceals, defaces, or
7 obliterates a document of gift, an amendment or revocation of
8 a document of gift, or a refusal commits a Class C felony.

9 §22-19-177. Immunity.

10 (a) In the absence of wantonness or willful
11 misconduct, a person that acts in accordance with this article
12 or with the applicable anatomical gift law of another state,
13 or attempts in good faith to do so, is not liable for the act
14 in a civil action, criminal prosecution, or administrative
15 proceeding.

16 (b) In the absence of wantonness or willful
17 misconduct, neither the person making an anatomical gift nor
18 the donor's estate is liable for any injury or damage that
19 results from the making or use of the gift.

20 (c) In determining whether an anatomical gift has
21 been made, amended, or revoked under this article, a person
22 may rely upon representations of an individual listed in
23 Section 22-19-168(a)(2), (3), (4), (5), (6), (7), or (8)
24 relating to the individual's relationship to the donor or

1 prospective donor unless the person knows that the
2 representation is untrue.

3 §22-19-178. Law Governing Validity; Choice of Law as
4 to Execution of Document of Gift; Presumption of Validity.

5 (a) A document of gift is valid if executed in
6 accordance with:

7 (1) this article;

8 (2) the laws of the state or country where it was
9 executed; or

10 (3) the laws of the state or country where the
11 person making the anatomical gift was domiciled, has a place
12 of residence, or was a national at the time the document of
13 gift was executed.

14 (b) If a document of gift is valid under this
15 section, the law of this state governs the interpretation of
16 the document of gift.

17 (c) A person may presume that a document of gift or
18 amendment of an anatomical gift is valid unless that person
19 knows that it was not validly executed or was revoked.

20 §22-19-179. Donor Registry.

21 (a) The Department of Public Safety may establish or
22 contract for the establishment of a donor registry.

23 (b) The Department of Public Safety shall cooperate
24 with a person that administers any donor registry that this
25 state establishes, contracts for, or recognizes for the

1 purpose of transferring to the donor registry all relevant
2 information regarding a donor's making, amendment to, or
3 revocation of an anatomical gift.

4 (c) A donor registry must:

5 (1) allow a donor or other person authorized under
6 Section 22-19-163 to include on the donor registry a statement
7 or symbol that the donor has made, amended, or revoked an
8 anatomical gift;

9 (2) be accessible to a procurement organization to
10 allow it to obtain relevant information on the donor registry
11 to determine, at or near death of the donor or a prospective
12 donor, whether the donor or prospective donor has made,
13 amended, or revoked an anatomical gift; and

14 (3) be accessible for purposes of subdivisions (1)
15 and (2) seven days a week on a 24-hour basis.

16 (d) Personally identifiable information on a donor
17 registry about a donor or prospective donor may not be used or
18 disclosed without the express consent of the donor,
19 prospective donor, or person that made the anatomical gift for
20 any purpose other than to determine, at or near death of the
21 donor or prospective donor, whether the donor or prospective
22 donor has made, amended, or revoked an anatomical gift.

23 (e) This section does not prohibit any person from
24 creating or maintaining a donor registry that is not

1 established by or under contract with the state. Any such
2 registry must comply with subsections (c) and (d).

3 §22-19-180. Effect of Anatomical Gift on Advance
4 Health Care Directive.

5 (a) In this section:

6 (1) "Advance health care directive" means a power of
7 attorney for health care or a record signed or authorized by a
8 prospective donor containing the prospective donor's direction
9 concerning a health care decision for the prospective donor.

10 (2) "Declaration" means a record signed by a
11 prospective donor specifying the circumstances under which a
12 life support system may be withheld or withdrawn from the
13 prospective donor.

14 (3) "Health care decision" means any decision
15 regarding the health care of the prospective donor.

16 (b) If a prospective donor has a declaration or
17 advance health care directive, and the terms of the
18 declaration or directive and the express or implied terms of a
19 potential anatomical gift are in conflict with regard to the
20 administration of measures necessary to ensure the medical
21 suitability of a part for transplantation or therapy the
22 prospective donor's attending physician and prospective donor
23 shall confer to resolve the conflict. If the prospective donor
24 is incapable of resolving the conflict, an agent acting under
25 the prospective donor's declaration or directive, or, if none,

1 or the agent is not reasonably available, another person
2 authorized by law other than this article to make health care
3 decisions on behalf of the prospective donor, shall act for
4 the donor to resolve the conflict. The conflict must be
5 resolved as expeditiously as possible. Information relevant to
6 the resolution of the conflict may be obtained from the
7 appropriate procurement organization and any other person
8 authorized to make an anatomical gift for the prospective
9 donor under Section 22-19-168. Before resolution of the
10 conflict, measures necessary to ensure the medical suitability
11 of the part may not be withheld or withdrawn from the
12 prospective donor if withholding or withdrawing the measures
13 is not contraindicated by appropriate end-of-life care.

14 §22-19-181. Cooperation Between Coroner, Medical
15 Examiner, and Procurement Organization.

16 (a) A coroner or medical examiner or district
17 attorney or local public health official or a designee shall
18 cooperate with procurement organizations to maximize the
19 opportunity to recover anatomical gifts for the purpose of
20 transplantation, therapy, research, or education when it has
21 been determined that the recovery will not interfere with a
22 death investigation. The organ procurement organization,
23 tissue bank, and eye bank will make every reasonable effort to
24 seek approval and release from the coroner or medical examiner
25 or district attorney or designee prior to proceeding with

1 consent approaches to the authorized parties as described in
2 this article. The request for release process will begin with
3 the coroner or designee, who may defer to the medical examiner
4 or designee, who may subsequently defer to the district
5 attorney or designee. At the time of coroner or medical
6 examiner or district attorney notification, the organ
7 procurement organization, tissue bank, or eye bank will share
8 the decedent's donor designation, if known. Despite the best
9 efforts of the organ procurement organization, tissue bank,
10 and eye bank, the topic of donation may be initiated on behalf
11 of the family, a donor record, or any member of the health
12 care team. In the event that jurisdiction is declined by the
13 coroner or designee or medical examiner or designee and/or
14 district attorney or designee, the organ procurement
15 organization, tissue bank, and/or eye bank may proceed with
16 the consent process from the authorized parties as described
17 in this article.

18 (b) If a coroner or medical examiner or district
19 attorney or local public health official receives notice from
20 a procurement organization that an anatomical gift might be
21 available or was made with respect to a decedent whose body is
22 under the jurisdiction of the coroner or medical examiner or
23 district attorney or local public health official and a
24 postmortem examination is going to be performed, unless the
25 coroner or medical examiner or district attorney or local

1 public health official denies recovery in accordance with
2 Section 22-19-182, the coroner or medical examiner or designee
3 will attempt to conduct a postmortem examination of the body
4 or the part in a manner and within a period compatible with
5 its preservation for the purposes of the gift.

6 (c) A part may not be removed from the body of a
7 decedent under the jurisdiction of a coroner or medical
8 examiner for transplantation, therapy, research, or education
9 unless the part is the subject of an anatomical gift and
10 release for such part has been obtained from the coroner or
11 medical examiner or district attorney or local public health
12 official or a designee. The body of a decedent under the
13 jurisdiction of the coroner or medical examiner may not be
14 delivered to a person for research or education unless the
15 body is the subject of an anatomical gift and release for such
16 body has been obtained by the coroner or medical examiner or
17 district attorney or local public health official or a
18 designee. This subsection does not preclude a coroner or
19 medical examiner from performing the medicolegal investigation
20 upon the body or parts of a decedent under the jurisdiction of
21 the coroner or medical examiner.

22 (d) Protocols for cooperation will be established
23 and utilized during cases under the jurisdiction of a coroner
24 or medical examiner or district attorney or local public
25 health official. These protocols should specify procedures for

1 maximizing donation, yet support and facilitate the
2 medicolegal investigation. These protocols will be reviewed,
3 modified (if required), and ratified unanimously as needed or
4 by a written request from a representative of the Jefferson
5 County Coroner/Medical Examiner Office, the State of Alabama's
6 Department of Forensic Sciences, the Alabama District
7 Attorney's Association, the Alabama Coroner's Association, the
8 Alabama Organ Center, and the Alabama Eye Bank.

9 §22-19-182. Facilitation of Anatomical Gift from
10 Decedent Whose Body is Under Jurisdiction of Coroner or
11 Medical Examiner.

12 (a) Upon request of a procurement organization, a
13 coroner or medical examiner shall release to the procurement
14 organization the name, contact information, and available
15 medical and social history of a decedent whose body is under
16 the jurisdiction of the coroner or medical examiner. Specific
17 operational details regarding visitation, referral methods,
18 recovery logistics, and efforts to minimize interruptions to
19 the operations of the coroner and/or medical examiner will be
20 established in the protocols referenced in Section 22-19-181
21 (d). Section 164.512 of the Health Information Portability and
22 Protection Act, enacted 1996, specifies that a covered entity
23 may use or disclose protected health information to organ
24 procurement organizations or other entities engaged in the
25 procurement, banking, or transplantation of cadaveric organs,

1 eyes, or tissues for the purpose of facilitating organ, eye,
2 or tissue donation and transplantation. If the decedent's body
3 or part is medically suitable for transplantation, therapy,
4 research, or education, the coroner or medical examiner shall
5 release postmortem (external and/or internal) examination
6 results to the procurement organization. A report limited to
7 cause and manner of death and disclosures of any evidence of
8 infection or other disease process which might preclude safe
9 transplantation of recovered organs and/or tissue will be made
10 available upon request at no charge to the organ procurement
11 organization, tissue bank, or eye bank. If a full report is
12 requested, the organ procurement organization, tissue bank,
13 and eye bank agree to reimburse the coroner or medical
14 examiner or district attorney's office at the currently
15 established price in order to offset costs. The procurement
16 organizations may make a subsequent disclosure of the
17 postmortem examination results or other information received
18 from the coroner or medical examiner only if relevant to
19 transplantation or therapy.

20 (b) The coroner or medical examiner may conduct a
21 medicolegal examination by reviewing all forwarded pertinent
22 medical records, laboratory test results, x-rays, organ,
23 tissue, eye recovery documentation, other diagnostic results,
24 and other information that any person possesses about a donor
25 or prospective donor whose body is under the jurisdiction of

1 the coroner or medical examiner which the coroner or medical
2 examiner determines may be relevant to the investigation.
3 Organ, tissue, and eye donation records, including
4 documentations of organ, tissue, or eye normalcy and
5 radiographs (organ and tissue donors only), should be
6 submitted to the coroner or medical examiner and/or district
7 attorney based on agreed upon protocols with the organ
8 procurement organization, tissue bank, and eye bank.

9 (c) A person that has any information requested by a
10 coroner or medical examiner pursuant to subsection (b) shall
11 provide that information as expeditiously as possible to allow
12 the coroner or medical examiner to conduct the medicolegal
13 investigation within a period compatible with the preservation
14 of parts for the purpose of transplantation, therapy,
15 research, or education. Specific time periods shall be
16 established by protocols referenced in Section 22-19-181 (d).

17 (d) Cooperation between the coroner or medical
18 examiner or district attorney or designee and the procurement
19 organizations for the timely removal of the part of a decedent
20 for the purpose of transplantation, therapy, research, or
21 education shall occur for a body that is under the
22 jurisdiction of the coroner or medical examiner regardless of
23 whether a postmortem examination is required or to be
24 performed for the recovery of a part for which a release from
25 the coroner or medical examiner or district attorney or

1 designee has been granted based on the determination that the
2 absence of the part will not interfere with determination of
3 cause, manner, circumstances surrounding the death, or
4 evidence collection.

5 (e) If an anatomical gift of a part from the
6 decedent under the jurisdiction of the coroner or medical
7 examiner has been or might be made, but the coroner or medical
8 examiner or district attorney or designee initially believes
9 that the recovery of the part could interfere with the
10 postmortem investigation into the decedent's cause or manner
11 of death or evidence collection, the coroner or medical
12 examiner or designee shall consult with the procurement
13 organization or physician, surgeon, surgeon's assistant, or
14 technician designated by the procurement organizations about
15 the proposed recovery. Ancillary tests such as MRI, CT scan,
16 and skeletal survey may be required by the coroner or medical
17 examiner or pathologist prior to the determination of
18 suitability for organ or tissue procurement. These tests shall
19 be performed and interpreted by the appropriate physician at
20 the request of the coroner or medical examiner or pathologist
21 and reported in a timely fashion. All expenses for such tests
22 shall be the responsibility of the procurement organizations
23 regardless of the outcome. After consultation, the coroner or
24 medical examiner or district attorney or designee may or may
25 not permit the recovery or impose specific restrictions

1 depending on the nature of the case and the necessity of
2 evidence collection, at which time the organ procurement
3 organization, tissue bank, and eye bank will abide by the
4 decision and operate accordingly.

5 (f) Following the consultation under subsection (e),
6 in the absence of mutually agreed-upon protocols to resolve
7 conflict between the coroner or medical examiner or district
8 attorney or designee and the organ procurement organization,
9 if the coroner or medical examiner or district attorney or
10 designee intends to deny recovery, the organ procurement
11 organization may request the coroner or medical examiner or
12 district attorney or designee to attend the organ recovery
13 procedure for the part before making a final determination to
14 allow the organ procurement organization to recover the part.
15 Satisfying the request will be at the discretion of the
16 coroner or medical examiner or district attorney or designee
17 based on feasibility. If the request is denied, the organ
18 procurement organization will abide by the decision not to
19 allow procurement and operate accordingly. During the organ
20 removal procedure, the coroner or medical examiner or designee
21 who elected to attend may allow recovery by the procurement
22 organization to proceed, or, if the coroner or medical
23 examiner or district attorney or designee who elected to
24 attend, reasonably believes that the part may be involved in
25 determining the decedent's cause of death or manner of death

1 or circumstances surrounding the death, deny recovery by the
2 procurement organization.

3 (g) If the coroner or medical examiner or district
4 attorney or designee denies recovery under subsection (f), the
5 coroner or medical examiner or district attorney or designee
6 shall provide the procurement organizations with a specific
7 reason for not allowing recovery of the part, which will then
8 be documented in the official records of the procurement
9 organizations.

10 (h) If the coroner or medical examiner or district
11 attorney or designee allows recovery of a part under
12 subsection (d), (e), or (f), the procurement organization,
13 upon request, shall cause the physician, surgeon's assistant,
14 or technician who removes the part to provide the coroner or
15 medical examiner with a record describing the condition of the
16 part, a biopsy (liver and kidneys), photographs, and any other
17 information and observations that would assist in the
18 postmortem examination. Specific offerings by the procurement
19 organizations shall be established in specific protocols
20 according to Section 22-19-181 (d) and made available to the
21 coroner or medical examiner or district attorney or designee.

22 (i) If a coroner, medical examiner, district
23 attorney or designee requests to be present at a removal
24 procedure under subsection (f), the coroner or medical
25 examiner or district attorney or designee may request

1 reimbursement for any additional costs and lost work time
2 incurred in complying with subsection (f).

3 §22-19-183. Uniformity of Application and
4 Construction. In applying and construing this uniform act,
5 consideration must be given to the need to promote uniformity
6 of the law with respect to its subject matter among states
7 that enact it.

8 §22-19-184. Relation to Electronic Signatures in
9 Global and National Commerce Act.

10 This article modifies, limits, and supersedes the
11 Electronic Signatures in Global and National Commerce Act, 15
12 U.S.C. Section 7001 et seq., but does not modify, limit or
13 supersede Section 101(a) of that act, 15 U.S.C. Section 7001,
14 or authorize electronic delivery of any of the notices
15 described in Section 103(b) of that act, 15 U.S.C. Section
16 7003(b).

17 Section 2. The Uniform Anatomical Gift Act, Article
18 3A (commencing with Section 22-19-50) of Chapter 19 of Title
19 22 of the Code of Alabama 1975, is repealed.

20 Section 3. Although this bill would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds, the bill is excluded from further
23 requirements and application under Amendment 621, now
24 appearing as Section 111.05 of the Official Recompilation of
25 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 4. This act is effective on the first day of
4 the sixth month after its passage and approval by the
5 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 25-MAR-08.

Greg Pappas
Clerk

Senate

01-MAY-08

Passed