

**West Virginia Legislature  
Commission on Interstate Cooperation**

**2007-2008 Interims  
January 6, 2008**

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Speaker Richard Thompson,  
Ex-Officio, Non-Voting Member

**Final Report of the**

**Joint Commission on Interstate Cooperation**

Your Joint Commission on Interstate Cooperation established pursuant to West Virginia Code §29-1B-1, *et seq.*, has had under consideration the Uniform Prudent Management of Institutional Funds Act and the Uniform Revised Anatomical Gift Act.

On the issue of the Uniform Prudent Management of Institutional Funds Act, your Commission **recommends** the passage of legislation.

On the issue of the Uniform Revised Anatomical Gift Act, your Commission **recommends** the passage of this legislation.

Respectfully submitted,



Senator Evan H. Jenkins,  
Co-Chair



Delegate John Pino,  
Co-Chair

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**H.B./S.B.**

(By )

[Introduced; Referred to the Committee on .]

10 A BILL to repeal §44-6A-1, §44-6A-2, §44-6A-3, §44-6A-4, §44-6A-5,  
11 §44-6A-6, §44-6A-7 and §44-6A-8, of the Code of West Virginia,  
12 1931, as amended; to amend said code by adding thereto a  
13 article, designated §44-6A-1, §44-6A-2, §44-6A-3, §44-6A-4,  
14 §44-6A-5, §44-6A-6, §44-6A-7, §44-6A-8, §44-6A-9 and §44-6A-  
15 10, all relating to funds held for charitable purposes by  
16 nonprofit, charitable institutions; repealing the Uniform  
17 Management of Institutional Funds Act (UMIFA); creating the  
18 Uniform Prudent Management of Institutional Funds Act  
19 (UPMIFA); standards of conduct in managing and investing  
20 institutional funds; appropriation of institutional funds for  
21 expenditures or accumulation; criteria for expenditure or  
22 accumulation of institutional funds; delegation to an external  
23 agent for the purpose of managing and investing of  
24 institutional funds; modifying or releasing donor restrictions  
25 on management, investment, or purpose of funds; reviewing

1 compliance; application to existing institutional funds;  
2 relation to the federal Electronic Signatures in Global and  
3 National Commerce Act; and uniformity in the application and  
4 construction of the act.

5 *Be it enacted by the Legislature of West Virginia:*

6 That §44-6A-1, §44-6A-2, §44-6A-3, §44-6A-4, §44-6A-5, §44-6A-  
7 6, §44-6A-7 and §44-6A-8 of the Code of West Virginia, 1931, as  
8 amended, be repealed; that said code be amended by adding thereto  
9 a new article, designated §44-6A-1, §44-6A-2, §44-6A-3, §44-6A-4,  
10 §44-6A-5, §44-6A-6, §44-6A-7, §44-6A-8, §44-6A-9 and §44-6A-10, all  
11 to read as follows:

12 **ARTICLE 6A. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT.**

13 **§44-6A-1. Short Title.**

14 This article may be cited as the "Uniform Prudent Management  
15 of Institutional Funds Act."

16 **§44-6A-2. Definitions.**

17 In this article:

18 (1) "Charitable purpose" means the relief of poverty, the  
19 advancement of education or religion, the promotion of health, the  
20 promotion of a governmental purpose, or any other purpose the  
21 achievement of which is beneficial to the community.

22 (2) "Endowment fund" means an institutional fund or part  
23 thereof that, under the terms of a gift instrument, is not wholly  
24 expendable by the institution on a current basis. The term does not

1 include assets that an institution designates as an endowment fund  
2 for its own use.

3 (3) "Gift instrument" means a record or records, including an  
4 institutional solicitation, under which property is granted to,  
5 transferred to, or held by or on behalf of an institution as an  
6 institutional fund.

7 (4) "Institution" means:

8 (A) a person, other than an individual, organized and  
9 operated exclusively for charitable purposes;

10 (B) a government or governmental subdivision, agency, or  
11 instrumentality, to the extent that it holds funds exclusively for  
12 a charitable purpose;

13 (C) a trust that had both charitable and noncharitable  
14 interests, after all noncharitable interests have terminated; and

15 (D) a community foundation or community trust.

16 (5) "Institutional fund" means a fund held by an institution  
17 exclusively for charitable purposes. The term does not include:

18 (A) program-related assets;

19 (B) a fund held for an institution by a trustee that is not  
20 an institution, unless the fund is held exclusively for the benefit  
21 of either a community foundation or community trust by a bank, a  
22 trust company or other similar fiduciary; or

23 (C) a fund in which a beneficiary that is not an institution  
24 has an interest, other than an interest that could arise upon  
25 violation or failure of the purposes of the fund.

1 (6) "Person" means an individual, corporation, business  
2 trust, estate, trust, partnership, limited liability company,  
3 association, joint venture, public corporation, government or  
4 governmental subdivision, agency, or instrumentality, or any other  
5 legal or commercial entity.

6 (7) "Program-related asset" means an asset held by an  
7 institution primarily to accomplish a charitable purpose of the  
8 institution and not primarily for investment.

9 (8) "Record" means information that is inscribed on a  
10 tangible medium or that is stored in an electronic or other medium  
11 and is retrievable in perceivable form.

12 (9) "Community foundation" or "community trust" means an  
13 institution that has been established to attract contributions for  
14 the benefit of a particular community or area whose contributions  
15 are often received and maintained in the form of separate trusts or  
16 funds which are subject to varying degrees of control by the  
17 governing body of the community foundation or community trust and  
18 which the governing body in good faith believes meets the  
19 requirements of the regulations issued by the Internal Revenue  
20 Service, United States Department of Treasury, presently codified  
21 as 26 CFR 1.170A-9(e)(10) and (11), to qualify as a "publicly  
22 supported" organization and to be treated as a "single entity"  
23 rather than as an aggregation of separate funds.

24 **§44-6A-3. Standard of Conduct in Managing and Investing**  
25 **Institutional Fund.**

1 (a) Subject to the intent of a donor expressed in a gift  
2 instrument, an institution, in managing and investing an  
3 institutional fund, shall consider the charitable purposes of the  
4 institution and the purposes of the institutional fund.

5 (b) In addition to complying with the duty of loyalty imposed  
6 by law other than this article, each person responsible for  
7 managing and investing an institutional fund shall manage and  
8 invest the fund in good faith and with the care an ordinarily  
9 prudent person in a like position would exercise under similar  
10 circumstances.

11 (c) In managing and investing an institutional fund, an  
12 institution:

13 (1) may incur only costs that are appropriate and reasonable  
14 in relation to the assets, the purposes of the institution, and the  
15 skills available to the institution; and

16 (2) shall make a reasonable effort to verify facts relevant  
17 to the management and investment of the fund.

18 (d) An institution may pool two or more institutional funds  
19 for purposes of management and investment.

20 (e) Except as otherwise provided by a gift instrument, the  
21 following rules apply:

22 (1) In managing and investing an institutional fund, the  
23 following factors, if relevant, must be considered:

24 (A) general economic conditions;

25 (B) the possible effect of inflation or deflation;

1 (C) the expected tax consequences, if any, of investment  
2 decisions or strategies;

3 (D) the role that each investment or course of action plays  
4 within the overall investment portfolio of the fund;

5 (E) the expected total return from income and the  
6 appreciation of investments;

7 (F) other resources of the institution;

8 (G) the needs of the institution and the fund to make  
9 distributions and to preserve capital; and

10 (H) an asset's special relationship or special value, if any,  
11 to the charitable purposes of the institution.

12 (2) Management and investment decisions about an individual  
13 asset must be made not in isolation but rather in the context of  
14 the institutional fund's portfolio of investments as a whole and as  
15 a part of an overall investment strategy having risk and return  
16 objectives reasonably suited to the fund and to the institution.

17 (3) Except as otherwise provided by law other than this  
18 article, an institution may invest in any kind of property or type  
19 of investment consistent with this section.

20 (4) An institution shall diversify the investments of an  
21 institutional fund unless the institution reasonably determines  
22 that, because of special circumstances, the purposes of the fund  
23 are better served without diversification.

24 (5) Within a reasonable time after receiving property, an  
25 institution shall make and carry out decisions concerning the

1 retention or disposition of the property or to rebalance a  
2 portfolio, in order to bring the institutional fund into compliance  
3 with the purposes, terms, and distribution requirements of the  
4 institution as necessary to meet other circumstances of the  
5 institution and the requirements of this article.

6 (6) A person that has special skills or expertise, or is  
7 selected in reliance upon the person's representation that the  
8 person has special skills or expertise, has a duty to use those  
9 skills or that expertise in managing and investing institutional  
10 funds.

11 **§44-6A-4. Appropriation for Expenditure or Accumulation of**  
12 **Endowment Fund; Rules of Construction.**

13 (a) Subject to the intent of a donor expressed in the gift  
14 instrument, an institution may appropriate for expenditure or  
15 accumulate so much of an endowment fund as the institution  
16 determines is prudent for the uses, benefits, purposes, and  
17 duration for which the endowment fund is established. This section  
18 does not limit the authority of the institution to expend funds as  
19 permitted under other law, the terms of the gift instrument, or the  
20 charter of the institution. Unless stated otherwise in the gift  
21 instrument, the assets in an endowment fund are donor-restricted  
22 assets (regardless of their treatment for accounting purposes)  
23 until appropriated for expenditure by the institution. In making  
24 a determination to appropriate or accumulate, the institution shall  
25 act in good faith, with the care that an ordinarily prudent person



1 in a like position would exercise under similar circumstances, and  
2 shall consider, if relevant, the following factors:

3 (1) the duration and preservation of the endowment fund;

4 (2) the purposes of the institution and the endowment fund;

5 (3) general economic conditions;

6 (4) the possible effect of inflation or deflation;

7 (5) the expected total return from income and the  
8 appreciation of investments;

9 (6) other resources of the institution; and

10 (7) the investment policy of the institution.

11 (b) To limit the authority to appropriate for expenditure or  
12 accumulate under subsection (a), a gift instrument must  
13 specifically state the limitation.

14 (c) Terms in a gift instrument designating a gift as an  
15 endowment, or a direction or authorization in the gift instrument  
16 to use only "income", "interest", "dividends", or "rents, issues,  
17 or profits", or "to preserve the principal intact", or words of  
18 similar import:

19 (1) create an endowment fund of permanent duration unless  
20 other language in the gift instrument limits the duration or  
21 purpose of the fund; and

22 (2) do not otherwise limit the authority to appropriate for  
23 expenditure or accumulate under subsection (a).

24 **§44-6A-5. Delegation of Management and Investment Functions.**

25 (a) Subject to any specific limitation set forth in a gift

1 instrument or in law other than this article, an institution may  
2 delegate to an external agent the management and investment of an  
3 institutional fund to the extent that an institution could  
4 prudently delegate under the circumstances. An institution shall  
5 act in good faith, with the care that an ordinarily prudent person  
6 in a like position would exercise under similar circumstances, in:

7 (1) selecting an agent;

8 (2) establishing the scope and terms of the delegation,  
9 consistent with the purposes of the institution and the  
10 institutional fund; and

11 (3) periodically reviewing the agent's actions in order to  
12 monitor the agent's performance and compliance with the scope and  
13 terms of the delegation.

14 (b) In performing a delegated function, an agent owes a duty  
15 to the institution to exercise reasonable care to comply with the  
16 scope and terms of the delegation.

17 (c) An institution that complies with subsection (a) is not  
18 liable for the decisions or actions of an agent to which the  
19 function was delegated.

20 (d) By accepting delegation of a management or investment  
21 function from an institution that is subject to the laws of this  
22 state, an agent submits to the jurisdiction of the courts of this  
23 state in all proceedings arising from or related to the delegation  
24 or the performance of the delegated function. \_

25 (e) An institution may delegate management and investment

1 functions to its committees, officers, or employees as authorized  
2 by law of this state other than this article.

3 **§44-6A-6. Release or Modification of Restrictions on Management,**  
4 **Investment, or Purpose.**

5 Without limiting the options otherwise available to an  
6 institution under applicable law, a restriction on the management,  
7 investment, purpose or other provision of a gift to an  
8 institutional fund may be released or modified in any one or more  
9 of the following ways:

10 (1) If the donor consents in a record, an institution may  
11 release or modify, in whole or in part, a restriction contained in  
12 a gift instrument on the management, investment, or purpose of an  
13 institutional fund. A release or modification may not allow a fund  
14 to be used for a purpose other than a charitable purpose of the  
15 institution.

16 (2) The court, upon application of an institution, may modify  
17 a restriction contained in a gift instrument regarding the  
18 management or investment of an institutional fund if the  
19 restriction has become impracticable or wasteful, if it impairs the  
20 management or investment of the fund, or if, because of  
21 circumstances not anticipated by the donor, a modification of a  
22 restriction will further the purposes of the fund. The institution  
23 shall notify the Attorney General of the application, and the  
24 Attorney General must be given an opportunity to be heard. To the  
25 extent practicable, any modification must be made in accordance

1 with the donor's probable intention.

2       (3) If a particular charitable purpose or a restriction  
3 contained in a gift instrument on the use of an institutional fund  
4 becomes unlawful, impracticable, impossible to achieve, or  
5 wasteful, the court, upon application of an institution, may modify  
6 the purpose of the fund or the restriction on the use of the fund  
7 in a manner consistent with the charitable purposes expressed in  
8 the gift instrument. The institution shall notify the Attorney  
9 General of the application, and the Attorney General must be given  
10 an opportunity to be heard.

11       (4) If an institution determines that a restriction contained  
12 in a gift instrument on the management, investment, or purpose of  
13 an institutional fund is unlawful, impracticable, impossible to  
14 achieve, or wasteful, the institution, sixty days after  
15 notification to the Attorney General, may release or modify the  
16 restriction, in whole or part, if:

17       (A) the institutional fund subject to the restriction has a  
18 total value of less than twenty-five thousand dollars;

19       (B) more than twenty years have elapsed since the fund was  
20 established; and

21       (C) the institution uses the property in a manner consistent  
22 with the charitable purposes expressed in the gift instrument.

23       (5) If the terms of a gift instrument, either specifically or  
24 by being subject to the charter of the institution, confer a power  
25 on the institution to release or modify a restriction on the

1 management or investment of an institutional fund or the particular  
2 charitable purpose or restriction on the use of the institutional  
3 fund, the institution shall have the power to so modify or  
4 terminate that restriction and the other provisions of this section  
5 shall not apply to that release or modification. A release or  
6 modification under this subsection may not allow a fund to be used  
7 for a purpose other than a charitable purpose of the institution.

8 **§44-6A-7. Reviewing Compliance.**

9 Compliance with this article is determined in light of the  
10 facts and circumstances existing at the time a decision is made or  
11 action is taken, and not by hindsight.

12 **§44-6A-8. Application to Existing Institutional Funds.**

13 This article applies to institutional funds existing on or  
14 established after the effective date of this article. As applied  
15 to institutional funds existing on the effective date of this  
16 article, this article governs only decisions made or actions taken  
17 on or after that date.

18 **§44-6A-9. Relation to Electronic Signatures in Global and National  
19 Commerce Act.**

20 This article modifies, limits, and supersedes the Electronic  
21 Signatures in Global and National Commerce Act, 15 U.S.C. Section  
22 7001 et seq., but does not modify, limit, or supersede Section 101  
23 of that act, 15 U.S.C. Section 7001(a), or authorize electronic  
24 delivery of any of the notices described in Section 103 of that

1 act, 15 U.S.C. Section 7003(b).

2 **§44-6A-10. Uniformity of Application and Construction.**

3       In applying and construing this uniform act, consideration  
4 must be given to the need to promote uniformity of the law with  
5 respect to its subject matter among states that enact it.

Note: This bill repeals the Uniform Management of Institutional Funds Act (UMIFA) and replaces it with the Uniform Prudent Management of Institutional Funds Act (UPMIFA). UPMIFA is an update of the UMIFA which dates back to 1972. UPMIFA applies to funds held for charitable purposes by nonprofit, charitable institutions. The three principal issues addressed are scope of coverage, investment obligations and expenditure of funds.

This article is new; therefore, underscoring and strike-throughs have been omitted.



Commission on Interstate Cooperation  
Revised Anatomical Gift Act  
January 8, 2008

1 body or part after death of the donor; establishing the manner of making, amending  
2 or revoking an anatomical gift after the decedent's death; identifying persons and  
3 institutions to whom anatomical gifts may be made; establishing presumptions for  
4 distribution of body and parts if donor does not specify to whom gift passes;  
5 requiring first responders, hospital staff and medical examiners to conduct a  
6 reasonable search of the body of a decedent for evidence of an anatomical gift or  
7 refusal to make a gift; specifying that delivery of document of gift during donor's  
8 lifetime not required; identifying who may examine a document of gift; establishing  
9 rights and duties of procurement organization in recovering a body or part the  
10 subject of an anatomical gift; requiring hospitals to cooperate with procurement  
11 organizations for purposes of recovering anatomical gifts; creating the offense of  
12 knowingly buying or selling a body part for transplantation or therapy; creating the  
13 offense of intentionally falsifying, concealing, defacing or obliterating a document of  
14 gift, amendment or revocation; establishing immunity from civil liability for good faith  
15 efforts to comply with article; specifying which law governs documents of gift;  
16 establishing donor registry through Division of Motor Vehicles and standards of  
17 operation; specifying effect of anatomical gift on advance health care directives;  
18 requiring cooperation between medical examiner and procurement organization;  
19 establishing standards and conditions for medical examiner's release of body or part  
20 subject to anatomical gift to procurement organizations; requiring authorization of  
21 prosecuting attorney for release of body or recovery of part where death is subject



1 to criminal investigation; and establishing relation to Electronic Signatures in Global  
2 and National Commerce Act.

3 *Be it enacted by the Legislature of West Virginia:*

4 That §16-19-1, §16-19-2, §16-19-3, §16-19-4, §16-19-5, §16-19-6, §16-19-7,  
5 §16-19-8, §16-19-9, §16-19-10, §16-19-11, §16-19-12, §16-19-13 and §16-19-14 of the  
6 code of West Virginia, 1931, as amended, be amended and reenacted and that said article  
7 be further amended by addition thereto nine new sections, designated §16-19-15,  
8 §16-19-16, §16-19-17, §16-19-18, §16-19-19, §16-19-20, §16-19-21, §16-19-22 and  
9 §16-19-23, all to read as follows:

10 **CHAPTER 16. PUBLIC HEALTH.**

11 **ARTICLE 19. ANATOMICAL GIFT ACT**

12 **§ 16-19-1. Short title.**

13 This article may be cited as the "Revised Anatomical Gift Act."

14 **§ 16-19-2. Applicability.**

15 This article applies to an anatomical gift or to an amendment to, revocation of, or  
16 refusal to make an anatomical gift, whenever made.

17 **§ 16-19-3. Definitions.**

18 As used in this article:

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

20 (2) "Agent" means an individual:

21 (A) Authorized by a medical power of attorney to make health care decisions on

1     behalf of a prospective donor; or

2             (B) Expressly authorized by any other record signed by the donor to make an  
3     anatomical gift on his or her behalf.

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

6             (4) "Authorized person" means a person other than the donor who is authorized to  
7     make an anatomical gift of the donor's body or part by section four or section nine of this  
8     article.

9             (5) "Certification of death" means a written pronouncement of death by an attending  
10    physician. Certification is required before an attending physician can allow removal of any  
11    part from the decedent's body for transplant purposes.

12            (6) "Decedent" means a deceased individual whose body is or may be the source  
13    of an anatomical gift. The term "decedent" includes a stillborn infant and, subject to  
14    restrictions imposed by law other than this article, a fetus.

15            (7) "Disinterested witness" means a witness other than the spouse, child, parent,  
16    sibling, grandchild, grandparent or guardian of or another adult who exhibited special care  
17    and concern for an individual who has made, amended, revoked, or refused to make an  
18    anatomical gift. The term "disinterested witness" does not include a person to whom an  
19    anatomical gift may pass pursuant to under section eleven of this article.

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

1 card or donor registry.

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

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

6 (11) "Driver's license" means a license or permit issued by the Division of Motor  
7 Vehicles to operate a vehicle.

8 (12) "Eye bank" means a person licensed, accredited, or regulated under federal or  
9 state law to engage in the recovery, screening, testing, processing, storage, or distribution  
10 of human eyes or portions of human eyes.

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

14 (14) "Hospital" means a facility licensed as a hospital under the law of any state or  
15 a facility operated as a hospital by the United States, a state, or a subdivision of a state.

16 (15) "Identification card" means an identification card issued by the Division of Motor  
17 Vehicles pursuant to section one, article two, chapter seventeen-b of this code.

18 (16) "Know" means to have actual knowledge. It does not include constructive notice  
19 and other forms of imputed knowledge.

20 (17) "Medical examiner" means an individual appointed pursuant to article twelve,  
21 chapter sixty-one of this code to perform death investigations and to establish the cause

1 and manner of death. The term “medical examiner” includes any person designated by the  
2 medical examiner to perform any duties required by this article.

3 (18) “Minor” means an individual who is under eighteen (18) years of age.

4 (19) “Organ procurement organization” means a nonprofit entity designated by the  
5 Secretary of the United States Department of Health and Human Services as an organ  
6 procurement organization pursuant to 42 U.S.C. §273(b).

7 (20) “Parent” means another person's natural or adoptive mother or father whose  
8 parental rights have not been terminated by a court of law.

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

11 (22) “Person” means an individual, corporation, business trust, estate, trust,  
12 partnership, limited liability company, association, joint venture, public corporation,  
13 government or governmental subdivision, agency, or instrumentality, or any other legal or  
14 commercial entity.

15 (23) “Physician” means an individual authorized to practice medicine or osteopathy  
16 under the law of any state.

17 (24) “Physician assistant” has the meaning provided in section sixteen, article three,  
18 chapter thirty of this code.

19 (25) “Procurement organization” means an eye bank, organ procurement  
20 organization or tissue bank.

21 (26) “Prospective donor” means an individual who is dead or near death and has

1 been determined by a procurement organization to have a part that could be medically  
2 suitable for transplantation, therapy, research, or education. The term “prospective donor”  
3 does not include an individual who has made a refusal.

4 (27) “Reasonably available” means able to be contacted by a procurement  
5 organization without undue effort and willing and able to act in a timely manner consistent  
6 with existing medical criteria necessary for the making of an anatomical gift.

7 (28) “Recipient” means an individual into whose body a decedent’s part has been  
8 or is intended to be transplanted.

9 (29) “Record” means information that is inscribed on a tangible medium or that is  
10 stored in an electronic or other medium and is retrievable in perceivable form.

11 (30) “Refusal” means a record created under section seven of this article that  
12 expressly states an individual’s intent to bar other persons from making an anatomical gift  
13 of his or her body or part.

14 (31) “Sign” means to execute or adopt a tangible symbol or attach to or logically  
15 associate with the record an electronic symbol, sound, or process, with the present intent  
16 to authenticate or adopt a record.

17 (32) “State” means a state of the United States, the District of Columbia, Puerto  
18 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
19 jurisdiction of the United States.

20 (33) “Surrogate” means an individual eighteen years of age or older who is  
21 reasonably available, is willing to make health care decisions on behalf of an incapacitated

1 person, possesses the capacity to make health care decisions and is identified or selected  
2 by the attending physician or advanced nurse practitioner in accordance with the provisions  
3 of article thirty of this chapter as the person who is to make those decisions in accordance  
4 with the provisions of this article.

5 (34) "Technician" means an individual qualified to remove or process parts by an  
6 organization that is licensed, accredited, or regulated under federal or state law. The term  
7 "technician" includes an enucleator, *i.e.*, an individual who removes or processes eyes or  
8 parts of eyes.

9 (35) "Tissue" means a portion of the human body other than an organ or an eye. The  
10 term "tissue" does not include blood unless the blood is donated for the purpose of  
11 research or education.

12 (36) "Tissue bank" means a person that is licensed, accredited, or regulated under  
13 federal or state law to engage in the recovery, screening, testing, processing, storage, or  
14 distribution of tissue.

15 (37) "Transplant hospital" means a hospital that furnishes organ transplants and  
16 other medical and surgical specialty services required for the care of transplant patients.

17 **§ 60-19-4. Who may make anatomical gift before donor's death.**

18 Subject to section eight of this article, an anatomical gift may be made during the life  
19 of the donor for the purpose of transplantation, therapy, research, or education by:

20 (1) The donor, if the donor is an adult;

21 (2) The donor, if the donor is a minor and is emancipated or sixteen (16) years of

1 age or older;

2 (3) An agent of the donor, unless the medical power of attorney or other record  
3 prohibits the agent from making an anatomical gift;

4 (4) A parent of the donor, if the donor is an unemancipated minor; or

5 (5) The donor's guardian.

6 **§ 60-19-5. Manner of making anatomical gift before donor's death.**

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

8 (1) By authorizing a statement or symbol to be imprinted on his or her driver's  
9 license or identification card indicating that he or she has made an anatomical gift;

10 (2) In a will;

11 (3) During a terminal illness or injury, by any form of communication addressed to  
12 at least two adults, at least one of whom is a disinterested witness; or

13 (4) As provided in subsection (b) of this section.

14 (b) (1) A donor or a person authorized by section four of this article may make a gift  
15 by:

16 (A) A donor card or other record signed by the donor or the authorized person; or

17 (B) Authorizing a statement or symbol indicating that the donor has made an  
18 anatomical gift to be included on a donor registry.

19 (2) If the donor or the authorized person is physically unable to sign a record,  
20 another individual may sign at the direction of the donor or the authorized person if the  
21 document of gift:

1 (A) Is witnessed and signed by at least two adults, at least one of whom is a  
2 disinterested witness; and

3 (B) Contains a statement that it has been signed and witnessed as required by  
4 paragraph (A) of this subdivision.

5 (c) Revocation, suspension, expiration, or cancellation of a driver's license or  
6 identification card upon which an anatomical gift is indicated does not invalidate the gift.

7 (d) An anatomical gift made by will takes effect upon the donor's death regardless  
8 of whether the will is probated. Invalidation of the will after the donor's death does not  
9 invalidate the gift.

10 **§ 60-19-6. Amending or revoking anatomical gift before donor's death.**

11 (a) Subject to section eight of this article, a donor or a person authorized pursuant  
12 to section four of this article may amend or revoke an anatomical gift by:

13 (1) (A) A record signed and dated by the donor or the authorized person.

14 (B) If the donor or the authorized person is physically unable to sign a record,  
15 another individual may sign at the direction of the donor or the authorized person if the  
16 document of gift:

17 (i) Is witnessed and signed by at least two adults, at least one of whom is a  
18 disinterested witness; and

19 (ii) Contains a statement that it has been signed and witnessed as required by  
20 subparagraph (i) of this paragraph; or

21 (2) A later-executed document of gift that amends or revokes a previous anatomical



1 gift, or portion of an anatomical gift, either expressly or by inconsistency.

2 (b) Subject to section eight of this article, a donor or a person authorized by section  
3 four of this article may revoke an anatomical gift by destroying or cancelling the document  
4 of gift, or the relevant portion of the document of gift, with the intent to revoke the gift.

5 (c) During a terminal illness or injury, a donor may amend or revoke an anatomical  
6 gift that was not made in a will by any form of communication addressed to at least two  
7 adults, at least one of whom is a disinterested witness.

8 (d) A donor who makes an anatomical gift in a will may amend or revoke the gift in  
9 the manner provided for amendment or revocation of wills or as provided in subsection (a)  
10 of this section.

11 **§ 60-19-7. Refusal to make anatomical gift; effect of refusal.**

12 (a) An individual may express his or her refusal to make an anatomical gift of his or  
13 her body or body parts by:

14 (1) A record signed by the individual. If the individual is physically unable to sign,  
15 another person acting at the direction of the individual may sign if the refusal:

16 (A) Is witnessed and signed by at least two adults, at least one of whom is a  
17 disinterested witness, at the request of the individual; and

18 (B) Contains a statement that it has been signed and witnessed as provided in  
19 paragraph (A) of this subdivision;

20 (2) The individual's will, regardless of whether the will is admitted to probate or  
21 invalidated after the individual's death; or

1           (3) During a terminal illness or injury of the individual, any form of communication  
2 made by the individual addressed to at least two adults, at least one of whom is a  
3 disinterested witness.

4           (b) An individual who has made a refusal may amend or revoke the refusal:

5           (1) In the manner provided in subsection (a) of this section for making a refusal;

6           (2) By subsequently making an anatomical gift pursuant to section five of this article  
7 that is inconsistent with the refusal; or

8           (3) By destroying or canceling the record evidencing the refusal, or the portion of the  
9 record used to make the refusal, with the intent to revoke the refusal.

10          (c) Except as otherwise provided in section eight of this article, in the absence of an  
11 express, contrary indication set forth in the refusal, an individual's unrevoked refusal to  
12 make an anatomical gift of his or her body or part bars all other persons from making an  
13 anatomical gift of the individual's body or part.

14       **§ 60-19-8. Preclusive effect of anatomical gift, amendment, or revocation.**

15          (a) Except as otherwise provided in subsections (g) and (f) of this section, in the  
16 absence of an express, contrary indication by the donor who has made or amended an  
17 anatomical gift, a person other than the donor is barred from making, amending, or  
18 revoking an anatomical gift of the donor's body or part

19          (b) A donor's revocation of an anatomical gift is not a refusal and bars another  
20 authorized person from making an anatomical gift of the donor's body or part pursuant to  
21 section five or section ten of this article.

1 (c) If an authorized person makes an unrevoked anatomical gift or an amendment  
2 to an anatomical gift of the donor's body or part, no other person may make, amend, or  
3 revoke the anatomical gift after the donor's death.

4 (d) A revocation of an anatomical gift under section six of this article by an  
5 authorized person does not bar another person from making an anatomical gift of the body  
6 or part under section five or section ten of this article.

7 (e) In the absence of an express, contrary indication by the donor or the person  
8 authorized to make an anatomical gift under section four of this article, an anatomical gift  
9 of a part is neither a refusal to give another part nor a limitation on the making of an  
10 anatomical gift of another part at a later time by the donor or another person.

11 (f) In the absence of an express, contrary indication by the donor or other person  
12 authorized to make an anatomical gift under section four of this article, an anatomical gift  
13 of a part for one purpose is not a limitation on the making of an anatomical gift of the part  
14 for any of the other purposes by the donor or any other person under section five or section  
15 ten of this article.

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

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

20 **§ 60-19-9. Who may make anatomical gift of decedent's body or part.**

21 (a) Unless barred by section seven or section eight of this article, an anatomical gift

1 of a decedent's body or part for purpose of transplantation, therapy, research, or education  
2 may be made by any member of the following classes of persons who is reasonably  
3 available, in the order of priority listed:

4 (1) A person holding a medical power of attorney or another agent of the decedent  
5 at the time of death who could have made an anatomical gift under section four of this  
6 article immediately before the decedent's death;

7 (2) The spouse of the decedent, unless in the six (6) months prior to the decedent's  
8 death the spouse has lived separate and apart from the decedent in a separate place of  
9 abode without cohabitation;

10 (3) Adult children of the decedent;

11 (4) The person acting as the guardian of the decedent at the time of death;

12 (5) An appointed health care surrogate;

13 (6) Parents of the decedent;

14 (7) Adult siblings of the decedent;

15 (8) Adult grandchildren of the decedent;

16 (9) Grandparents of the decedent; or

17 (10) An adult who exhibited special care and concern for the decedent.

18 (b) If there is more than one member of a class entitled to make an anatomical gift,  
19 any member of the class may make the anatomical gift unless he or she or a person to  
20 whom the anatomical gift may pass pursuant to section eleven of this section knows of an  
21 objection by another member of the class. If an objection is known, the majority of the

1 members of the same class must be opposed to the donation in order for the donation to  
2 be revoked. In the event of a tie vote, the attending physician or advanced nurse  
3 practitioner shall appoint a health care surrogate to decide whether to make an anatomical  
4 gift of the decedent's body or part for the purpose of transplantation, therapy, research or  
5 education.

6 (c) A person may not make an anatomical gift if, at the time of the decedent's death,  
7 a person in a prior class is reasonably available to make or to object to the making of an  
8 anatomical gift.

9 **§ 60-19-10. Manner of making, amending, or revoking anatomical gift of decedent's**  
10 **body or part.**

11 (a) A person authorized to make an anatomical gift under section nine of this article  
12 may do so by:

13 (1) A document of gift signed by the authorized person; or

14 (2) An oral communication by the authorized person that is electronically recorded  
15 or is contemporaneously reduced to a record and signed by the person receiving the oral  
16 communication.

17 (b) An anatomical gift by a person authorized by section nine of this article may be  
18 amended or revoked orally or in writing by any member of a prior class who is reasonably  
19 available. If more than one member of the prior class is reasonably available, the gift made  
20 by the authorized person may be revoked only if a majority of the members of the same  
21 class are opposed to the anatomical gift. In the event of a tie vote, a health care surrogate

1 shall be appointed to decide whether to honor, amend or revoke the anatomical gift of the  
2 decedent's body or part.

3 (c) A revocation under subsection (b) of this section is effective only if, before an  
4 incision has been made to remove a part from the donor's body or before invasive  
5 procedures have begun to prepare the recipient, the procurement organization, transplant  
6 hospital, or physician or technician knows of the revocation.

7 **§ 60-19-11. Persons who may receive anatomical gift; purpose of anatomical gift.**

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

10 (1) A hospital; accredited medical school, dental school, college, or university; organ  
11 procurement organization; or other appropriate person, for research or education;

12 (2) An individual designated by the person making the anatomical gift as the  
13 recipient of the part;

14 (3) An eye bank or tissue bank.

15 (b) If an anatomical gift is made to an individual under subdivision (2), subsection  
16 (a) of this section and the donated body part cannot be transplanted into the named  
17 individual, in the absence of an express, contrary indication by the person making the  
18 anatomical gift, the part passes pursuant to subsection (g) of this section;

19 (c) If a document of gift makes an anatomical gift and identifies the purpose for  
20 which the gift may be used but does not designate a person described in subsection (a) of  
21 this section to receive the gift, the following rules apply:

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

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

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

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

10 (d) If the document of gift states more than one purpose of an anatomical gift but  
11 does not specify the priority, the gift must be used for transplantation or therapy, if suitable.  
12 If the gift cannot be used for transplantation or therapy, the gift may be used for research  
13 or education.

14 (e) If the document of gift does not identify the purpose of the anatomical gift, the gift  
15 may be used only for transplantation or therapy and passes in accordance with subsection  
16 (g) of this section.

17 (f) If a document of gift specifies only a general intent to make an anatomical gift by  
18 using words such as "donor", "organ donor", or "body donor", or by a symbol or statement  
19 of similar import, the gift may be used for transplantation, research or therapy and passes  
20 in accordance with subsection (g) of this section.

21 (g) For purposes of subsections (b), (e), and (f) of this section, and anatomical gift

1 passes in the following manner:

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

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

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

6 (h) An anatomical gift of an organ for transplantation or therapy, other than a gift to  
7 an individual described in subdivision (2), subsection (a) of this section, passes to an organ  
8 procurement organization as custodian of the organ.

9 (i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this  
10 section or the body or part is not used for transplantation, therapy, research, or education,  
11 custody of the body or part passes to the person under obligation to dispose of the body  
12 or part.

13 (j) A person may not accept an anatomical gift if he or she knows that:

14 (1) The gift was not effectively made pursuant to this article; or

15 (2) The decedent made a refusal under section seven of this article that was not  
16 revoked.

17 (k) For purposes of subsection (j), if a person knows that an anatomical gift was  
18 made in a document of gift, the person is presumed to know of any amendment or  
19 revocation of the gift or any refusal to make an anatomical gift in the same document of gift.

20 (l) Except as provided in subdivision (2), subsection (a) of this section, nothing in this  
21 article affects the allocation of organs for transplantation or therapy.



1     **§ 60-19-12. Search and notification.**

2           (a) A law enforcement officer, firefighter, paramedic, or other emergency rescuer  
3 finding an individual he or she reasonably believes is dead or near death shall make a  
4 reasonable search of the individual for a document of gift or other information identifying  
5 the individual as a donor or as having made a refusal. If a document of gift or a refusal is  
6 located by the search and the individual is taken to a hospital, the person who conducted  
7 the search shall send the document of gift or refusal to the hospital.

8           (b) If no other source of the information is immediately available, hospital staff shall  
9 search an individual reasonably believed to be dead or near death as soon as practical  
10 after the arrival at the hospital for a document of gift or other information identifying the  
11 individual as a donor or as having made a refusal.

12           (c) A medical examiner shall conduct a reasonable search of an individual whose  
13 body is placed in his or her custody for a document of gift or other information identifying  
14 the individual as a donor or as having made a refusal.

15           (d) A person is not subject to criminal or civil liability for failing to discharge the duties  
16 imposed by this section but may be subject to administrative sanctions.

17     **§ 60-19-13. Delivery of document of gift not required; right to examine.**

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

20           (b) Upon or after an individual's death, a person in possession of a document of gift  
21 or a refusal with respect to the decedent shall allow (1) a person authorized to make or

1 object to the making of an anatomical gift with respect to the decedent or (2) a person to  
2 whom the gift could pass under section eleven of this article to examine and copy the  
3 document of gift or refusal.

4 **§ 60-19-14. Rights and duties of procurement organization and others.**

5 (a) When a hospital refers an individual at or near death to a procurement  
6 organization, the organization shall make a reasonable search of the records of the Division  
7 of Motor Vehicles and any donor registry it knows of for the geographical area in which the  
8 individual resides to ascertain whether the individual has made an anatomical gift.

9 (b) The Division of Motor Vehicles shall allow a procurement organization  
10 reasonable access to information in the Division's records to ascertain whether an  
11 individual at or near death is a donor. The Commissioner of the Division of Motor Vehicles  
12 shall propose legislative rules for promulgation pursuant to article three, chapter twenty-  
13 nine-a of this code to facilitate procurement agencies' access to records pursuant to this  
14 subsection.

15 (c) When a hospital refers an individual at or near death to a procurement  
16 organization, the organization may conduct any reasonable examination necessary to  
17 ensure the medical suitability of a part that is or could be the subject of an anatomical gift  
18 for transplantation, therapy, research, or education from a donor or a prospective donor.  
19 During the examination period, measures necessary to ensure the medical suitability of the  
20 part may not be withdrawn unless the hospital or procurement organization knows that the  
21 prospective donor expressed a contrary intent.

1 (d) Unless prohibited by law, at any time after a donor's death, a person to whom  
2 a decedent's part passes under section eleven of this article may conduct any reasonable  
3 examination necessary to ensure the medical suitability of the body or part for its intended  
4 purpose.

5 (e) Unless prohibited by law, an examination under subsection (c) or (d) of this  
6 section may include an examination of all medical and dental records of the donor or  
7 prospective donor.

8 (f) Upon the death of a minor who was a donor or had signed a refusal, unless a  
9 procurement organization knows the minor is emancipated, the procurement organization  
10 shall conduct a reasonable search for the parents of the minor and provide the parents with  
11 an opportunity to revoke or amend the anatomical gift or revoke the refusal.

12 (g) Upon referral by a hospital under subsection (a) of this section, a procurement  
13 organization shall make a reasonable search for any person listed in section nine of this  
14 article having priority to make an anatomical gift on behalf of a prospective donor. If a  
15 procurement organization receives information that an anatomical gift to any other person  
16 was made, amended, or revoked, it shall promptly advise the other person of all relevant  
17 information.

18 (h) Except as provided in and section twenty-two of this article, the rights of the  
19 person to whom a part passes under section eleven of this article are superior to the rights  
20 of all others. A person may accept or reject an anatomical gift in whole or in part. Subject  
21 to the terms of the document of gift and this article, a person that accepts an anatomical

1 gift of an entire body may allow embalming, burial or cremation, and use of remains in a  
2 funeral service. If the gift is of a part, the person to whom the part passes under section  
3 eleven of this article shall, upon the death of the donor and before embalming, burial, or  
4 cremation, cause the part to be removed without unnecessary mutilation.

5 (i) Neither the physician or the physician assistant who attends the decedent at  
6 death nor the physician or the physician assistant who determines the time of death may  
7 participate in the procedures for removing or transplanting a part from the decedent.

8 (j) A physician or technician may remove a donated part from the body of a donor  
9 that the physician or technician is qualified to remove.

10 **§ 60-19-15. Coordination of procurement and use.**

11 Each hospital licensed in this state shall enter into agreements or affiliations with  
12 procurement organizations for coordinating procurement and use of anatomical gifts.

13 **§ 60-19-16. Prohibited acts; sale or purchase of parts prohibited.**

14 (a) Except as provided in subsection (b) of this section, a person who knowingly  
15 buys or sells, for valuable consideration, a part for transplantation or therapy is guilty of a  
16 felony and upon conviction is subject to a fine of not more than fifty thousand dollars  
17 (\$50,000) or imprisonment for a term of not more than five years, or both fine and  
18 imprisonment.

19 (b) A person who, in order to obtain a financial gain, intentionally falsifies, forges,  
20 conceals, defaces, or obliterates a document of gift, an amendment or revocation of a  
21 document of gift or a refusal is guilty of a felony and upon conviction is subject to a fine of

1 not more than \$50,000 or imprisonment not exceeding five years.

2 (c) Nothing in this section prohibits a person from charging reasonable amounts for  
3 the costs of removing, processing, preserving, quality control, storing, transporting,  
4 implanting, or disposing of a part.

5 **§60-19-17. Immunity.**

6 (a) A person, including a medical examiner, who acts in accordance with this article  
7 or with the applicable anatomical gift law of another state, or attempts in good faith to do  
8 so, is not liable for the act in a civil action, criminal prosecution, or administrative  
9 proceeding.

10 (b) Neither the person making an anatomical gift nor the donor's estate is liable for  
11 any injury or damage that results from the making or use of the gift.

12 (c) In determining whether an anatomical gift has been made, amended, or revoked  
13 under this article, a person to whom a gift passes may rely upon an individual's  
14 representations that he or she is the donor or a person authorized to make a gift of the  
15 body or part pursuant to subsection (a), section nine of this article unless the person to  
16 whom the gift may pass knows that the representation is untrue.

17 **§60-19-18. Law governing validity; choice of law as to execution of document of gift;**  
18 **presumption of validity.**

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

20 (1) This article;

21 (2) The laws of the state or country where it was executed; or

1           (3) The laws of the state or country where the person making the anatomical gift was  
2 domiciled, has a place of residence, or was a national at the time the document of gift was  
3 executed.

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

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

8 **§ 60-19-19. Donor registry.**

9           (a) The Division of Motor Vehicles may establish or contract for the establishment  
10 of a donor registry.

11           (b) The Division of Motor Vehicles shall cooperate with a person that administers any  
12 donor registry established or contracted for pursuant to this section or recognized for the  
13 purpose of transferring to the donor registry all relevant information regarding a donor's  
14 making, amendment to, or revocation of an anatomical gift.

15           (c) A donor registry must:

16           (1) Allow a donor or person authorized under section four of this article to include  
17 on the donor registry a statement or symbol that the donor has made, amended, or revoked  
18 an anatomical gift;

19           (2) Be accessible to a procurement organization to allow it to obtain relevant  
20 information on the donor registry to determine, at or near death of the donor or a  
21 prospective donor, whether the donor or prospective donor has made, amended, or

1       revoked an anatomical gift; and

2               (3) Be accessible for purposes of paragraphs (1) and (2) of this subsection twenty-  
3       four hours a day, seven days a week.

4               (d) Personally identifiable information on a donor registry about a donor or  
5       prospective donor may not be used or disclosed without the express consent of the donor,  
6       prospective donor, or person that made the anatomical gift for any purpose other than to  
7       determine, at or near death of the donor or prospective donor, whether the donor or  
8       prospective donor has made, amended, or revoked an anatomical gift.

9               (e) This section does not prohibit any person from creating or maintaining a donor  
10       registry that is not established by or under contract with the state. Any private donor  
11       registry must comply with subsections (c) and (d) of this section.

12       **§ 60-19-20. Effect of anatomical gift on advance health-care directive.**

13               (a) In this section:

14               (1) "Advance health-care directive" means a medical power of attorney or a record  
15       signed or authorized by a prospective donor containing the prospective donor's direction  
16       concerning a health-care decision for the prospective donor.

17               (2) "Declaration" means a record signed by a prospective donor specifying the  
18       circumstances under which a life support system may be withheld or withdrawn from the  
19       prospective donor.

20               (3) "Health-care decision" means any decision regarding the health care of the  
21       prospective donor.

1 (b) If a prospective donor has a declaration or advance health care directive, the  
2 terms of which are in conflict with the express or implied terms of a potential anatomical gift  
3 with regard to administration of measures necessary to ensure the medical suitability of a  
4 part for transplantation or therapy, the attending physician and the prospective donor shall  
5 confer to resolve the conflict.

6 (1) If the prospective donor is incapable of resolving the conflict, an agent acting  
7 under the prospective donor's declaration or directive, or, if none or the agent is not  
8 reasonably available, another person authorized by law other than this article to make  
9 health care decisions on behalf of the prospective donor, shall act for the donor to resolve  
10 the conflict as quickly as possible.

11 (2) A procurement organization and any person authorized to make an anatomical  
12 gift on behalf of a prospective donor pursuant to section nine of this article shall provide any  
13 information relevant to the resolution of the conflict

14 (3) Pending resolution of the conflict, measures necessary to ensure the medical  
15 suitability of a part may not be withheld or withdrawn from the prospective donor unless  
16 doing so is contraindicated by appropriate end-of-life care.

17 **§ 60-19-21. Cooperation between medical examiner and procurement organization.**

18 (a) A medical examiner shall cooperate with a procurement organization to maximize  
19 the opportunity to recover anatomical gifts for the purpose of transplantation, therapy,  
20 research, or education.

21 (b) If a medical examiner receives notice from a procurement organization that an



1 anatomical gift was or might have been made with respect to a decedent whose body is in  
2 the custody of the medical examiner, the medical examiner shall conduct a post-mortem  
3 examination in a manner and within a period compatible with its preservation for the  
4 purposes of the gift, unless the medical examiner denies recovery in accordance with  
5 section twenty-two of this article.

6 (c) While the decedent's body is in the custody of a medical examiner, a part may  
7 not be removed for transplantation, therapy, research, or education or the body delivered  
8 for research and education unless the part or the body is the subject of an anatomical gift.  
9 This subsection does not preclude a medical examiner from performing a medicolegal  
10 investigation upon the decedent's body or parts while in his or her custody.

11 **§ 60-19-22. Facilitation of anatomical gift from decedent whose body is under**  
12 **jurisdiction of medical examiner.**

13 (a) Except as provided in subsection (e) of this section, the medical examiner shall,  
14 upon request of a procurement organization, release to the procurement organization the  
15 name, contact information and available medical and social history of a decedent whose  
16 body is in the custody of the medical examiner. If the decedent's body or part is medically  
17 suitable for transplantation, therapy, research, or education, the medical examiner shall  
18 release post-mortem examination results to the procurement organization, subject to  
19 subsection (e) of this section. The procurement organization may make a subsequent  
20 disclosure of the post-mortem examination results or other information received from the  
21 medical examiner only if relevant to transplantation or therapy.

1           (b) The medical examiner may conduct a medicolegal examination by reviewing all  
2 medical records, laboratory test results, x-rays, other diagnostic results, and other  
3 information that any person possesses about a donor or prospective donor whose body is  
4 under the jurisdiction of the medical examiner which the medical examiner determines may  
5 be relevant to the investigation.

6           (c) A person with any information requested by a medical examiner pursuant to  
7 subsection (b) of this section shall provide that information as soon as possible to allow the  
8 medical examiner to conduct the medicolegal investigation within a period compatible with  
9 the preservation of parts for the purpose of transplantation, therapy, research, or education.

10          (d) If the medical examiner determines that a post-mortem examination is not  
11 required or that a post-mortem examination is required but that the recovery of the part that  
12 is the subject of an anatomical gift will not interfere with the examination, the medical  
13 examiner and procurement organization shall cooperate in the timely removal of the part  
14 from the decedent for the purpose of transplantation, therapy, research, or education.

15          (e) If the decedent's death is the subject of a criminal investigation, the medical  
16 examiner may not release the body or part that is the subject of an anatomical gift or the  
17 social history, medical history or post-mortem examination results without the express  
18 authorization of the prosecuting attorney of the county having jurisdiction over the  
19 investigation.

20          (f) A medical examiner has the authority to deny recovery of a part subject to an  
21 anatomical gift if he or she reasonably believes that recovery interfere with the post-mortem

1 investigation into the cause or manner of the decedent's death. If the medical examiner  
2 is inclined to deny recovery, he or she shall first consult with the procurement organization  
3 about the proposed recovery. Following consultation, and in the absence of mutually  
4 agreed-upon protocols to resolve any conflict between the medical examiner and the  
5 procurement organization, the medical examiner shall, at the request of the procurement  
6 organization, attend a procedure for removing the part before making a final decision.  
7 During the removal procedure, the medical examiner may decide whether to allow recovery  
8 to proceed or to deny recovery.

9 (g) If the medical examiner denies recovery of the part, he or she shall:

10 (1) Provide the procurement organization with a written explanation of the specific  
11 reasons for not allowing recovery of the part; and

12 (2) Include in the medical examiner's records the specific reasons for denying  
13 recovery of the part.

14 (h) If the medical examiner allows recovery of a part, the procurement organization  
15 shall, upon request, cause the physician or technician who removes the part to provide the  
16 medical examiner with a written report describing the condition of the part, a biopsy, a  
17 photograph or any other information and observations that would assist in the post-mortem  
18 examination.

19 (i) A medical examiner required to be present at a removal procedure pursuant to  
20 subsection (f) of this section is entitled to reimbursement for the expenses associated with  
21 appearing at the recovery procedure from the procurement organization which requested

1 his or her presence.

2 (j) A medical examiner performing any of the functions specified in this section shall  
3 comply with all applicable provisions of article twelve, chapter sixty-one of this code.

4 **§60-19-23. Relation to Electronic Signatures in Global and National Commerce Act.**

5 This act modifies, limits, and supersedes the Electronic Signatures in Global and  
6 National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede  
7 Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize electronic delivery of any  
8 of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

The entire article was rewritten; therefore, strike-throughs and underscoring have been omitted.

NOTE: This bill repeals the current Anatomical Gift Act and replaces it with a Revised Act based on the Uniform Laws Commission's 2006 revision. The Revised Act makes it easier to make a document of gift, particularly with regard to organ donor notations on drivers' licenses and ID cards; authorizes additional persons, such as a medical power of attorney or health care surrogate, to make anatomical gifts on behalf of an incapacitated person before death actually occurs; expands the list of those who may make an anatomical gift after an individual dies without a document of gift; establishes presumptions for distribution fo body parts where the anatomical gift that does not specify to whom the gift passes; accommodates the use of donor registries; clearly provides for a document of refusal if an individual does not want organs donated; establishes criminal penalties for misrepresentation of a document of gift for the purposes of selling organs or tissue; and resolves ambiguity and conflict between anatomical gifts and "Do Not Resuscitate" instructions.