

HB 4304

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SENATE & HOUSE OF DELEGATES
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4304

(By Delegates Pino, Guthrie, Blair and Walters)



Passed March 6, 2008

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4304

(BY DELEGATES PINO, GUTHRIE, BLAIR AND WALTERS)

[Passed March 6, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §16-19-1, §16-19-2, §16-19-3, §16-19-4, §16-19-5, §16-19-6, §16-19-7, §16-19-8, §16-19-9, §16-19-10, §16-19-11, §16-19-12, §16-19-13 and §16-19-14 of the Code of West Virginia, 1931, as amended; and to amend said article by adding thereto nine new sections, designated §16-19-15, §16-19-16, §16-19-17, §16-19-18, §16-19-19, §16-19-20, §16-19-21, §16-19-22 and §16-19-23, all establishing the Revised Anatomical Gift Act; providing for a short title; establishing applicability; defining terms; identifying who may make an anatomical gift before the donor's death; establishing the manner of making an anatomical gift before the donor's death; providing for amendment or revocation of an anatomical gift before the donor's death; clarifying donor right to refuse to make an anatomical gift and the effect of such refusal; specifying the preclusive effect of an anatomical gift, amendment or revocation; identifying who may make an anatomical gift of a body or part after death of the donor; establishing the manner of making, amending or revoking an anatomical gift after the decedent's death; identifying persons

and institutions to whom anatomical gifts may be made; establishing presumptions for distribution of body and parts if donor does not specify to whom gift passes; requiring first responders, hospital staff and medical examiners to conduct a reasonable search of the body of a decedent for evidence of an anatomical gift or refusal to make a gift; specifying that delivery of document of gift during donor's lifetime not required; identifying who may examine a document of gift; establishing rights and duties of procurement organization in recovering a body or part the subject of an anatomical gift; requiring hospitals to cooperate with procurement organizations for purposes of recovering anatomical gifts; creating the offense of knowingly buying or selling a body part for transplantation or therapy; creating the offense of intentionally falsifying, concealing, defacing or obliterating a document of gift, amendment or revocation; establishing immunity from civil liability for good faith efforts to comply with article; specifying which law governs documents of gift; establishing donor registry through Division of Motor Vehicles and standards of operation; specifying effect of anatomical gift on advance health care directives; requiring cooperation between medical examiner and procurement organization; establishing standards and conditions for medical examiner's release of body or part subject to anatomical gift to procurement organizations; requiring authorization of prosecuting attorney for release of body or recovery of part where death is subject to criminal investigation; and establishing relation to Electronic Signatures in Global and National Commerce Act.

Be it enacted by the Legislature of West Virginia:

That §16-19-1, §16-19-2, §16-19-3, §16-19-4, §16-19-5, §16-19-6, §16-19-7, §16-19-8, §16-19-9, §16-19-10, §16-19-11, §16-19-12, §16-19-13 and §16-19-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said article be amended by adding thereto nine new sections, designated

§16-19-15, §16-19-16, §16-19-17, §16-19-18, §16-19-19, §16-19-20, §16-19-21, §16-19-22 and §16-19-23, all to read as follows:

ARTICLE 19. ANATOMICAL GIFT ACT.

§16-19-1. Short title.

1 This article may be cited as the “Revised Anatomical
2 Gift Act.”

§16-19-2. Applicability.

1 This article applies to an anatomical gift or to an
2 amendment to, revocation of or refusal to make an
3 anatomical gift, whenever made.

§16-19-3. Definitions.

1 As used in this article:

2 (1) “Adult” means an individual who is at least eighteen
3 (18) years of age.

4 (2) “Agent” means an individual:

5 (A) Authorized by a medical power of attorney to make
6 health care decisions on behalf of a prospective donor; or

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

9 (3) “Anatomical gift” means a donation of all or part of
10 a human body, to take effect after the donor’s death, for the
11 purpose of transplantation, therapy, research or education.

12 (4) “Authorized person” means a person other than the
13 donor who is authorized to make an anatomical gift of the
14 donor’s body or part by section four or section nine of this
15 article.

16 (5) “Certification of death” means a written
17 pronouncement of death by an attending physician.
18 Certification is required before an attending physician can
19 allow removal of any part from the decedent’s body for
20 transplant purposes.

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

25 (7) “Disinterested witness” means a witness other than
26 the spouse, child, parent, sibling, grandchild, grandparent or
27 guardian of or another adult who exhibited special care and
28 concern for an individual who has made, amended, revoked
29 or refused to make an anatomical gift. The term
30 “disinterested witness” does not include a person to whom an
31 anatomical gift may pass pursuant to section eleven of this
32 article.

33 (8) “Document of gift” means a donor card or other
34 record used to make an anatomical gift. The term includes a
35 statement or symbol on a driver’s license, identification card
36 or donor registry.

37 (9) “Donor” means an individual whose body or part is
38 the subject of an anatomical gift.

39 (10) “Donor registry” means a database that contains
40 records of anatomical gifts and amendments to or revocations
41 of anatomical gifts.

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

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

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

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

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

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

61 (17) "Medical examiner" means an individual appointed
62 pursuant to article twelve, chapter sixty-one of this code to
63 perform death investigations and to establish the cause and
64 manner of death. The term "medical examiner" includes any
65 person designated by the medical examiner to perform any
66 duties required by this article.

67 (18) "Minor" means an individual who is under eighteen
68 (18) years of age.

69 (19) "Organ procurement organization" means a
70 nonprofit entity designated by the Secretary of the United
71 States Department of Health and Human Services as an organ
72 procurement organization pursuant to 42 U.S.C. §273(b).

73 (20) "Parent" means another person's natural or adoptive
74 mother or father whose parental rights have not been
75 terminated by a court of law.

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

78 (22) "Person" means an individual, corporation, business
79 trust, estate, trust, partnership, limited liability company,
80 association, joint venture, public corporation, government or
81 governmental subdivision, agency, or instrumentality, or any
82 other legal or commercial entity.

83 (23) "Physician" means an individual authorized to
84 practice medicine or osteopathy under the law of any state.

85 (24) "Physician assistant" has the meaning provided in
86 section sixteen, article three, chapter thirty of this code.

87 (25) "Procurement organization" means an eye bank,
88 organ procurement organization or tissue bank.

89 (26) "Prospective donor" means an individual who is
90 dead or near death and has been determined by a procurement
91 organization to have a part that could be medically suitable
92 for transplantation, therapy, research or education. The term
93 "prospective donor" does not include an individual who has
94 made a refusal.

95 (27) "Reasonably available" means able to be contacted
96 by a procurement organization without undue effort and

97 willing and able to act in a timely manner consistent with
98 existing medical criteria necessary for the making of an
99 anatomical gift.

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

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

105 (30) “Revocation” means the affirmative declaration of
106 the potential donor’s withdrawal of their decision to make or
107 not make a document of gift. It does not have the same
108 meaning as a refusal but only establishes that the potential
109 donor chooses not to make an affirmative declaration of their
110 wishes.

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

115 (32) “Sign” means to execute or adopt a tangible symbol
116 or attach to or logically associate with the record an
117 electronic symbol, sound or process, with the present intent
118 to authenticate or adopt a record.

119 (33) “State” means a state of the United States, the
120 District of Columbia, Puerto Rico, the United States Virgin
121 Islands, or any territory or insular possession subject to the
122 jurisdiction of the United States.

123 (34) “Surrogate” means an individual eighteen years of
124 age or older who is reasonably available, is willing to make
125 health care decisions on behalf of an incapacitated person,

126 possesses the capacity to make health care decisions and is
127 identified or selected by the attending physician or advanced
128 nurse practitioner in accordance with the provisions of article
129 thirty of this chapter as the person who is to make those
130 decisions in accordance with the provisions of this article.

131 (35) “Technician” means an individual qualified to
132 remove or process parts by an organization that is licensed,
133 accredited or regulated under federal or state law. The term
134 “technician” includes an enucleator, *i.e.*, an individual who
135 removes or processes eyes or parts of eyes.

136 (36) “Tissue” means a portion of the human body other
137 than an organ or an eye. The term “tissue” does not include
138 blood unless the blood is donated for the purpose of research
139 or education.

140 (37) “Tissue bank” means a person that is licensed,
141 accredited or regulated under federal or state law to engage
142 in the recovery, screening, testing, processing, storage or
143 distribution of tissue.

144 (38) “Transplant hospital” means a hospital that furnishes
145 organ transplants and other medical and surgical specialty
146 services required for the care of transplant patients.

§16-19-4. Who may make anatomical gift before donor’s death.

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

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

5 (2) The donor, if the donor is a minor and is emancipated
6 or sixteen (16) years of age or older;

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

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

12 (5) The donor's guardian.

**§16-19-5. Manner of making anatomical gift before donor's
death.**

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

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

5 (2) In a will;

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

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

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

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

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

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

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

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

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

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

§16-19-6. Amending or revoking anatomical gift before donor's death.

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

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

6 (B) If the donor or the authorized person is physically
7 unable to sign a record, another individual may sign at the
8 direction of the donor or the authorized person if the
9 document of gift:

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

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

15 (2) A later-executed document of gift that amends or
16 revokes a previous anatomical gift, or portion of an
17 anatomical gift, either expressly or by inconsistency.

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

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

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

§16-19-7. Refusal to make anatomical gift; effect of refusal.

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

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

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

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

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

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

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

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

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

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

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

§16-19-8. Preclusive effect of anatomical gift, amendment, or revocation.

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

7 (b) If an authorized person makes an unrevoked
8 anatomical gift or an amendment to an anatomical gift of the
9 donor's body or part, no other person may make, amend or
10 revoke the anatomical gift after the donor's death.

11 (c) A revocation of an anatomical gift by the donor or by
12 another individual who is authorized to act on behalf of the
13 donor under any section of this Act, is not a refusal.
14 Following the revocation, the donor, or any person authorized
15 by any section of this act to act on behalf of the donor before
16 the donor's death, or any person authorized to act on behalf
17 of the decedent after the decedent's death, may subsequently
18 make an anatomical gift of the body or part thereof.

19 (d) In the absence of an express, contrary indication by
20 the donor or the person authorized to make an anatomical gift
21 under section four of this article, an anatomical gift of a part
22 is neither a refusal to give another part nor a limitation on the
23 making of an anatomical gift of another part at a later time by
24 the donor or another person.

25 (e) In the absence of an express, contrary indication by
26 the donor or other person authorized to make an anatomical
27 gift under section four of this article, an anatomical gift of a
28 part for one purpose is not a limitation on the making of an
29 anatomical gift of the part for any of the other purposes by

30 the donor or any other person under section five or section
31 ten of this article.

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

**§16-19-9. Who may make anatomical gift of decedent's body or
part.**

1 (a) Unless barred by section seven or section eight of this
2 article, an anatomical gift of a decedent's body or part for
3 purpose of transplantation, therapy, research or education
4 may be made by any member of the following classes of
5 persons who is reasonably available, in the order of priority
6 listed:

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

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

15 (3) Adult children of the decedent;

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

18 (5) An appointed health care surrogate;

19 (6) Parents of the decedent;

20 (7) Adult siblings of the decedent;

21 (8) Adult grandchildren of the decedent;

22 (9) Grandparents of the decedent; or

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

25 (b) If there is more than one member of a class entitled to
26 make an anatomical gift, any member of the class may make
27 the anatomical gift unless he or she or a person to whom the
28 anatomical gift may pass pursuant to section eleven of this
29 section knows of an objection by another member of the
30 class. If an objection is known, the majority of the members
31 of the same class must be opposed to the donation in order
32 for the donation to be revoked. In the event of a tie vote, the
33 attending physician or advanced nurse practitioner shall
34 appoint a health care surrogate to decide whether to make an
35 anatomical gift of the decedent's body or part for the purpose
36 of transplantation, therapy, research or education.

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

**§16-19-10. Manner of making, amending, or revoking
anatomical gift of decedent's body or part.**

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

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

5 (2) An oral communication by the authorized person that
6 is electronically recorded or is contemporaneously reduced to
7 a record and signed by the person receiving the oral
8 communication.

9 (b) An anatomical gift by a person authorized by section
10 nine of this article may be amended or revoked orally or in
11 writing by any member of a prior class who is reasonably
12 available. If more than one member of the prior class is
13 reasonably available, the gift made by the authorized person
14 may be revoked only if a majority of the members of the
15 same class are opposed to the anatomical gift. In the event of
16 a tie vote, a health care surrogate shall be appointed to decide
17 whether to honor, amend or revoke the anatomical gift of the
18 decedent's body or part.

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

**§16-19-11. Persons who may receive anatomical gift; purpose of
anatomical gift.**

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

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

6 (2) An individual designated by the person making the
7 anatomical gift as the recipient of the part; or

8 (3) An eye bank or tissue bank.

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

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

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

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

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

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

31 (d) If the document of gift states more than one purpose
32 of an anatomical gift but does not specify the priority, the gift
33 must be used for transplantation or therapy, if suitable. If the
34 gift cannot be used for transplantation or therapy, the gift
35 may be used for research or education.

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

40 (f) If a document of gift specifies only a general intent to
41 make an anatomical gift by using words such as “donor”,
42 “organ donor”, or “body donor”, or by a symbol or statement
43 of similar import, the gift may be used for transplantation,
44 research or therapy and passes in accordance with subsection
45 (g) of this section.

46 (g) For purposes of subsections (b), (e), and (f) of this
47 section, and anatomical gift passes in the following manner:

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

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

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

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

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

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

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

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

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

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

§16-19-12. Search and notification.

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

11 (b) If no other source of the information is immediately
12 available, hospital staff shall search an individual reasonably
13 believed to be dead or near death as soon as practical after the
14 arrival at the hospital for a document of gift or other

15 information identifying the individual as a donor or as having
16 made a refusal.

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

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

**§16-19-13. Delivery of document of gift not required; right to
examine.**

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

3 (b) Upon or after an individual's death, a person in
4 possession of a document of gift or a refusal with respect to
5 the decedent shall allow: (1) A person authorized to make or
6 object to the making of an anatomical gift with respect to the
7 decedent; or (2) a person to whom the gift could pass under
8 section eleven of this article to examine and copy the
9 document of gift or refusal.

**§16-19-14. Rights and duties of procurement organization and
others.**

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

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

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

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

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

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

40 (g) Upon referral by a hospital under subsection (a) of
41 this section, a procurement organization shall make a
42 reasonable search for any person listed in section nine of this
43 article having priority to make an anatomical gift on behalf
44 of a prospective donor. If a procurement organization
45 receives information that an anatomical gift to any other
46 person was made, amended or revoked, it shall promptly
47 advise the other person of all relevant information.

48 (h) Except as provided in and section twenty-two of this
49 article, the rights of the person to whom a part passes under
50 section eleven of this article are superior to the rights of all
51 others. A person may accept or reject an anatomical gift, in
52 whole or in part. Subject to the terms of the document of gift
53 and this article, a person that accepts an anatomical gift of an
54 entire body may allow embalming, burial or cremation, and
55 use of remains in a funeral service. If the gift is of a part, the
56 person to whom the part passes under section eleven of this
57 article shall, upon the death of the donor and before
58 embalming, burial or cremation, cause the part to be removed
59 without unnecessary mutilation.

60 (i) Neither the physician or the physician assistant who
61 attends the decedent at death nor the physician or the
62 physician assistant who determines the time of death may
63 participate in the procedures for removing or transplanting a
64 part from the decedent.

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

§16-19-15. Coordination of procurement and use.

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

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

1 (a) Except as provided in subsection (b) of this section,
2 a person who knowingly buys or sells, for valuable
3 consideration, a part for transplantation or therapy is guilty of
4 a felony, and upon conviction thereof, shall be fined not more
5 than fifty thousand dollars (\$50,000) or imprisoned in a state
6 correctional facility for a term of not more than five years, or
7 both fined and imprisoned.

8 (b) A person who, in order to obtain a financial gain,
9 intentionally falsifies, forges, conceals, defaces or obliterates
10 a document of gift, an amendment or revocation of a
11 document of gift or a refusal is guilty of a felony, and upon
12 conviction thereof, shall be fined not more than fifty
13 thousand dollars (\$50,000) or imprisoned in a state
14 correctional facility for a term of not more than five years.

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

§16-19-17. Immunity.

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

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

9 (c) In determining whether an anatomical gift has been
10 made, amended or revoked under this article, a person to

11 whom a gift passes may rely upon an individual's
12 representations that he or she is the donor or a person
13 authorized to make a gift of the body or part pursuant to
14 subsection (a), section nine of this article, unless the person
15 to whom the gift may pass knows that the representation is
16 untrue.

**§16-19-18. Law governing validity; choice of law as to execution
of document of gift; presumption of validity.**

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

3 (1) This article;

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

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

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

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

§16-19-19. Donor registry.

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

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

9 (c) A donor registry must:

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

14 (2) Be accessible to a procurement organization to allow
15 it to obtain relevant information on the donor registry to
16 determine, at or near death of the donor or a prospective
17 donor, whether the donor or prospective donor has made,
18 amended or revoked an anatomical gift; and

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

22 (d) Personally identifiable information on a donor
23 registry about a donor or prospective donor may not be used
24 or disclosed without the express consent of the donor,
25 prospective donor or person that made the anatomical gift for
26 any purpose other than to determine, at or near death of the
27 donor or prospective donor, whether the donor or prospective
28 donor has made, amended or revoked an anatomical gift.

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

§16-19-20. Effect of anatomical gift on advance health-care directive.

1 (a) In this section:

2 (1) "Advance health-care directive" means a medical
3 power of attorney or a record signed or authorized by a
4 prospective donor containing the prospective donor's
5 direction concerning a health-care decision for the
6 prospective donor.

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

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

13 (b) If a prospective donor has a declaration or advance
14 health care directive, the terms of which are in conflict with
15 the express or implied terms of a potential anatomical gift
16 with regard to administration of measures necessary to ensure
17 the medical suitability of a part for transplantation or therapy,
18 the attending physician and the prospective donor shall
19 confer to resolve the conflict.

20 (1) If the prospective donor is incapable of resolving the
21 conflict, an agent acting under the prospective donor's
22 declaration or directive, or, if none or the agent is not
23 reasonably available, another person authorized by law other
24 than this article to make health-care decisions on behalf of
25 the prospective donor, shall act for the donor to resolve the
26 conflict as quickly as possible.

27 (2) A procurement organization and any person
28 authorized to make an anatomical gift on behalf of a

29 prospective donor pursuant to section nine of this article shall
30 provide any information relevant to the resolution of the
31 conflict.

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

**§16-19-21. Cooperation between medical examiner and
procurement organization.**

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

5 (b) If a medical examiner receives notice from a
6 procurement organization that an anatomical gift was or
7 might have been made with respect to a decedent whose body
8 is in the custody of the medical examiner, the medical
9 examiner shall endeavor to conduct a post-mortem
10 examination in a manner and within a period compatible with
11 its preservation for the purposes of the gift, unless the
12 medical examiner denies recovery in accordance with section
13 twenty-two of this article.

14 (c) While the decedent's body is in the custody of a
15 medical examiner, a part may not be removed for
16 transplantation, therapy, research or education or the body
17 delivered for research and education unless the part or the
18 body is the subject of an anatomical gift. This subsection
19 does not preclude a medical examiner from performing a
20 medicolegal investigation upon the decedent's body or parts
21 while in his or her custody.

§16-19-22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.

1 (a) Except as provided in subsection (e) of this section,
2 the medical examiner shall, upon request of a procurement
3 organization, release to the procurement organization the
4 name, contact information and available medical and social
5 history of a decedent whose body is in the custody of the
6 medical examiner. If the decedent's body or part is
7 medically suitable for transplantation, therapy, research or
8 education, the medical examiner shall release post-mortem
9 examination results after being paid in accordance with the
10 fee schedule established in rules to the procurement
11 organization, subject to subsection (e) of this section. The
12 procurement organization may make a subsequent disclosure
13 of the post-mortem examination results or other information
14 received from the medical examiner only if relevant to
15 transplantation or therapy.

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

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

29 (d) If the medical examiner determines that a post-
30 mortem examination is not required or that a post-mortem

31 examination is required but that the recovery of the part that
32 is the subject of an anatomical gift will not interfere with the
33 examination, the medical examiner and procurement
34 organization shall cooperate in the timely removal of the part
35 from the decedent for the purpose of transplantation, therapy,
36 research or education.

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

43 (f) If an anatomical gift of a part from the decedent
44 under the jurisdiction of the medical examiner has been or
45 might be made, but the medical examiner initially believes
46 that the recovery of the part could interfere with the post-
47 mortem investigation into the decedent's cause or manner of
48 death, the medical examiner shall consult with the
49 procurement organization about the proposed recovery. After
50 the consultation, the medical examiner may allow the
51 recovery at his or her discretion. The medical examiner may
52 attend the removal procedure for the part before making a
53 final determination not to allow the procurement organization
54 to recover the part.

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

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

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

62 (h) If the medical examiner allows recovery of a part,
63 the procurement organization shall, upon request, cause the
64 physician or technician who removes the part to provide the
65 medical examiner with a written report describing the
66 condition of the part, a biopsy, a photograph or any other
67 information and observations that would assist in the post-
68 mortem examination.

69 (i) A medical examiner who decides to be present at a
70 removal procedure pursuant to subsection (f) of this section
71 is entitled to reimbursement for the expenses associated with
72 appearing at the recovery procedure from the procurement
73 organization which requested his or her presence.

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

**§16-19-23. Relation to Electronic Signatures in Global and
National Commerce Act.**

1 This act modifies, limits and supersedes the Electronic
2 Signatures in Global and National Commerce Act, 15 U.S.C.
3 §7001 et seq., but does not modify, limit or supersede Section
4 101(a) of that act, 15 U.S.C. Section 7001, or authorize
5 electronic delivery of any of the notices described in Section
6 103(b) of that act, 15 U.S.C. Section 7003(b).

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



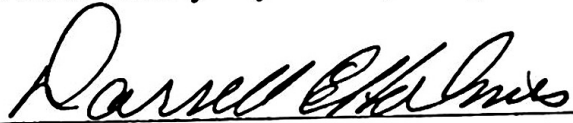
Chairman Senate Committee



Chairman House Committee

Originating in the House.

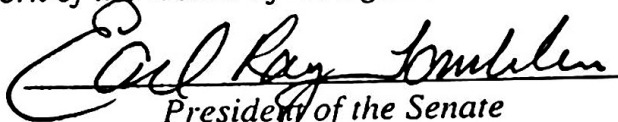
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

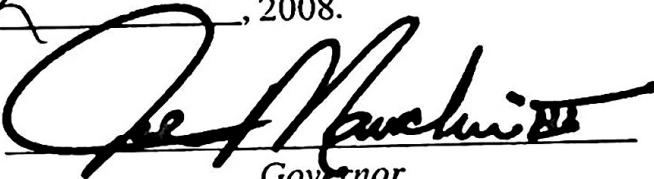


President of the Senate



Speaker of the House of Delegates

The within is approved this the 27th
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2008

Time 9:30am