
WEST VIRGINIA CODE CHAPTER 16

ARTICLE 19

WV Legislature

§16-19-1. Short title.

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

WV Legislature

§16-19-2. Applicability.

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

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§16-19-3. Definitions.

As used in this article:

"Adult" means an individual who is at least 18 years of age.

"Agent" means an individual:

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

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

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

"Authorized person" means a person other than the donor who is authorized to make an anatomical gift of the donor's body or part by §16-19-4 or §16-19-9 of this code.

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

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

"Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of, or another adult who exhibited special care and concern for, an individual who has made, amended, revoked, or refused to make an anatomical gift. The term "disinterested witness" does not include a person to whom an anatomical gift may pass pursuant to §16-19-11 of this code.

"Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, hunting or fishing license, or donor registry.

"Donor" means an individual whose body or part is the subject of an anatomical gift.

"Donor registry" means a database that contains records of anatomical gifts and amendments to, or revocations, of anatomical gifts.

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

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

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

"Hunting or fishing license" means a license issued by the Division of Natural Resources pursuant to §20-2-1 et seq. of this code, for hunting and fishing in the state of West Virginia.

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

"Identification card" means an identification card issued by the Division of Motor Vehicles pursuant to §17B-2-1 of this code.

"Know" means to have actual knowledge. It does not include constructive notice and other forms of imputed knowledge.

"Medical examiner" means an individual appointed pursuant to §61-12-3 et seq. of this code to perform death investigations and to establish the cause and manner of death. The term "medical examiner" includes any person designated by the medical examiner to perform any duties required by this article.

"Minor" means an individual who is under 18 years of age.

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

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

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

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

"Physician assistant" has the meaning provided in §30-3E-1 of this code.

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

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

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

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

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Revocation" means the affirmative declaration of the potential donor's withdrawal of their decision to make or not make a document of gift. It does not have the same meaning as a refusal but only establishes that the potential donor chooses not to make an affirmative declaration of their wishes.

"Refusal" means a record created under §16-19-7 of this code that expressly states an individual's intent to bar other persons from making an anatomical gift of his or her body or part.

"Sign" means to execute or adopt a tangible symbol or attach to or logically associate with the record an electronic symbol, sound or process, with the present intent to authenticate or adopt a record.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Surrogate" means an individual 18 years of age or older who is reasonably available, is willing to make health care decisions on behalf of an incapacitated person, possesses the capacity to make health care decisions, and is identified or selected by the attending physician or advanced nurse practitioner in accordance with §16-30-1 et seq. of this code as the person who is to make those decisions in accordance with the provisions of this article.

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

"Tissue" means a portion of the human body other than an organ or an eye. The term "tissue"

does not include blood unless the blood is donated for the purpose of research or education.

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

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

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

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

- (1) The donor, if the donor is an adult;
- (2) The donor, if the donor is a minor and is emancipated or sixteen (16) years of age or older;
- (3) An agent of the donor, unless the medical power of attorney or other record prohibits the agent from making an anatomical gift;
- (4) A parent of the donor, if the donor is an unemancipated minor; or
- (5) The donor's guardian.

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

(a) A donor may make an anatomical gift:

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

(2) In a will;

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

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

(b) (1) A donor or a person authorized by §16-9-4 of this code may make a gift by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke 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.

(a) Unless barred by §16-19-7 or §16-19-8 of this code, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available in the order of priority listed:

(1) A person holding a medical power of attorney or another agent of the decedent at the time of death who could have made an anatomical gift under §16-19-4 of this code immediately before the decedent's death;

(2) The spouse of the decedent, unless in the six months prior to the decedent's death the spouse has lived separate and apart from the decedent in a separate place of abode without cohabitation or an action for divorce is pending;

(3) Adult children of the decedent;

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

(5) An appointed health care surrogate;

(6) Parents of the decedent;

(7) Adult siblings of the decedent;

(8) Adult grandchildren of the decedent;

(9) Grandparents of the decedent;

(10) An adult who exhibited special care and concern for the decedent; or

(11) A person authorized or obligated to dispose of the decedent's body.

(b) If there is more than one member of a class entitled to make an anatomical gift, any member of the class may make the anatomical gift unless he or she, or a person to whom the anatomical gift may pass pursuant to §16-19-11 of this code, knows of an objection by another member of the class. If an objection is known, the majority of the members of the same class must be opposed to the donation in order for the donation to be revoked. In the event of a tie vote, the anatomical gift may proceed despite the objection by a member or members of a class.

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

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

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

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

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

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

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

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

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

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

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

(3) An eye bank or tissue bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§16-19-12. Search and notification.

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

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

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

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

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

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

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

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

- (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Division of Motor Vehicles and any donor registry it knows of for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.
- (b) The Division of Motor Vehicles shall allow a procurement organization reasonable access to information in the division's records to ascertain whether an individual at or near death is a donor. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation pursuant to §29A-3-1 *et seq.* of this code to facilitate procurement agencies' access to records pursuant to this subsection.
- (c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the prospective donor expressed a contrary intent.
- (d) Unless prohibited by law, at any time after a donor's death, a person to whom a decedent's part passes under §16-19-11 of this code may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.
- (e) Unless prohibited by law, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.
- (f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.
- (g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in §16-19-9 of this code having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.
- (h) Except as provided in §16-19-22 of this code, the rights of the person to whom a part passes under §16-19-11 of this code are superior to the rights of all others. A person may accept or reject an anatomical gift, in whole or in part. Subject to the terms of the document of gift and this article, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a

part, the person to whom the part passes under §16-19-11 of this code shall, upon the death of the donor and before embalming, burial, or cremation, cause the part to be removed without unnecessary mutilation.

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

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

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

(l) A part may not be removed from the body of a decedent under a medical examiner's jurisdiction for transplantation, therapy, research, or education, nor delivered to a person for research or education, unless the part is the subject of an anatomical gift.

(m) Upon the request of a procurement organization, the medical examiner shall release to the procurement organization the name, contact information, name of the next of kin, and available medical and social history of a decedent whose body is under the medical examiner's jurisdiction. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release the post-mortem examination results to the procurement organization. The procurement organization may not make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner unless the subsequent disclosure is relevant to transplantation, therapy, research, or education.

(n) If a hospital refers an individual whose death is imminent or who has died in a hospital to an organ procurement organization, and the organ procurement organization, in consultation with the individual's attending physician or a designee, determines based upon a medical record review and other information supplied by the individual's attending physician or a designee, that the individual may be a prospective donor; and the individual:

(1) Has not indicated in any document an intention to either limit the anatomical gifts of the individual to parts of the body which do not require a ventilator or other life-sustaining measures, or

(2) Has not indicated in any document an intention to deny making or refusing to make an anatomical gift; or

(3) Amended or revoked an anatomical gift in any document, the organ procurement organization may conduct a blood or tissue test or minimally invasive examination which is reasonably necessary to evaluate the medical suitability of a body part that is or may be the

subject of an anatomical gift.

(o) Testing and examination conducted pursuant to subsection (n) shall comply with a denial or refusal to make an anatomical gift or any limitation expressed by the individual with respect to the part of the body to donate or a limitation the provision of a ventilator or other life-sustaining measures, or a revocation or amendment to an anatomical gift. The results of tests and examinations conducted pursuant to subsection (n) shall be used or disclosed only:

- (1) To evaluate medical suitability for donation and to facilitate the donation process; and
- (2) As otherwise required or permitted by law.

(p) A hospital may not withdraw or withhold any measures necessary to maintain the medical suitability of a body part that may be the subject of an anatomical gift until the organ procurement organization or designated requestor, as appropriate, has had the opportunity to advise the applicable persons under this article of the option to make an anatomical gift and has received or been denied authorization to proceed with recovery of the part.

(q) Subject to the individual's wishes under §16-19-11(c)(3) of this code, after an individual's death, persons who may receive anatomical gift pursuant to §16-19-11 of this code may conduct any test or examination reasonably necessary to evaluate the medical suitability of the body or part for its intended purpose.

(r) The provisions of this section may not be construed to preclude a medical examiner from performing an investigation of a decedent under the medical examiner's jurisdiction.

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

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

WV Legislature

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

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

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

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

§16-19-17. Immunity.

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

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

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

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

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

(1) This article;

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

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

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

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

§16-19-19. Donor registry.

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

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

(c) The Division of Natural Resources shall provide all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift to a donor registry established or contracted for pursuant to this section.

(d) A donor registry must:

(1) Allow a donor or person authorized under §16-19-4 of this code to include on the donor registry a statement or symbol that the donor has made, amended, or revoked an anatomical gift;

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

(3) Be accessible for purposes of subdivisions (1) and (2) of this subsection 24 hours a day, seven days a week.

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

(f) The Director of the Division of Natural Resources shall provide information regarding the existence of the anatomical organ donation program, the procedures for a hunting or fishing license applicant to indicate his or her desire to make an anatomical gift, and having document of gift affixed to his or her hunting or fishing license pursuant to this article.

(g) The Division of Natural Resources shall be reimbursed for all costs relating to the creation and administration of an anatomical gift record by the Center for Organ Recovery and Education: Provided, That the division is absolved of all responsibilities to collect and provide donor registrant records pursuant to this article if not reimbursed according to this subsection.

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

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

(a) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

(a) The medical examiner shall, upon request of a procurement organization, release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is in the custody of the medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release post-mortem examination results after being paid in accordance with the fee schedule established in rules to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner only if relevant to transplantation or therapy.

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

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

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

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

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

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

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

the part.

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

(h) A medical examiner who decides to be present at a removal procedure is entitled to reimbursement for the expenses associated with appearing at the recovery procedure from the procurement organization which requested his or her presence.

(i) A medical examiner performing any of the functions specified in this section shall comply with all applicable provisions of §61-12-1 *et seq.* of this code.

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

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

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