

1 AN ACT concerning organ donation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Anatomical Gift Act is amended by
5 changing Sections 5-20 and 5-45 as follows:

6 (755 ILCS 50/5-20) (was 755 ILCS 50/5)

7 Sec. 5-20. Manner of Executing Anatomical Gifts.

8 (a) A gift of all or part of the body under Section 5-5 (a)
9 may be made by will. The gift becomes effective upon the death
10 of the testator without waiting for probate. If the will is not
11 probated, or if it is declared invalid for testamentary
12 purposes, the gift, to the extent that it has been acted upon
13 in good faith, is nevertheless valid and effective.

14 (b) A gift of all or part of the body under Section 5-5 (a)
15 may also be made by a written, signed document other than a
16 will. The gift becomes effective upon the death of the donor.
17 The document, which may be a card or a valid driver's license
18 designed to be carried on the person, is effective without
19 regard to the presence or signature of witnesses. Such a gift
20 may also be made by properly executing the form provided by the
21 Secretary of State on the reverse side of the donor's driver's
22 license pursuant to subsection (b) of Section 6-110 of The
23 Illinois Vehicle Code. Delivery of the document of gift during
24 the donor's lifetime is not necessary to make the gift valid.

25 (b-1) A gift under Section 5-5 (a) may also be made by an
26 individual consenting to have his or her name included in the
27 First Person Consent organ and tissue donor registry maintained
28 by the Secretary of State under Section 6-117 of the Illinois
29 Vehicle Code. An individual's consent to have his or her name
30 included in the First Person Consent organ and tissue donor
31 registry constitutes full legal authority for the donation of
32 any of his or her organs or tissue. Consenting to be included

1 in the First Person Consent organ and tissue donor registry is
2 effective without regard to the presence or signature of
3 witnesses.

4 (c) The gift may be made to a specified donee or without
5 specifying a donee. If the latter, the gift may be accepted by
6 the attending physician as donee upon or following death. If
7 the gift is made to a specified donee who is not available at
8 the time and place of death, then if made for the purpose of
9 transplantation, it shall be effectuated in accordance with
10 Section 5-25, and if made for any other purpose the attending
11 physician upon or following death, in the absence of any
12 expressed indication that the donor desired otherwise, may
13 accept the gift as donee.

14 (d) Notwithstanding Section 5-45 (b), the donor may
15 designate in his will, card, or other document of gift the
16 surgeon or physician to carry out the appropriate procedures.
17 In the absence of a designation or if the designee is not
18 available, the donee or other person authorized to accept the
19 gift may employ or authorize any surgeon or physician for the
20 purpose.

21 (e) Any gift by a person designated in Section 5-5 (b)
22 shall be made by a document signed by him or made by his
23 telegraphic, recorded telephonic, or other recorded message.

24 (f) When there is a suitable candidate for organ donation
25 and a donation or consent to donate has not yet been given,
26 procedures to preserve the decedent's body for possible organ
27 and tissue donation may be implemented under the authorization
28 of the applicable organ procurement agency, at its own expense,
29 prior to making a donation request pursuant to Section 5-25. If
30 the organ procurement agency does not locate a person
31 authorized to consent to donation or consent to donation is
32 denied, then procedures to preserve the decedent's body shall
33 be ceased and no donation shall be made. The organ procurement
34 agency shall respect the religious tenets of the decedent, if
35 known, such as a pause after death, before initiating
36 preservation services.

1 (Source: P.A. 93-794, eff. 7-22-04; 94-75, eff. 1-1-06.)

2 (755 ILCS 50/5-45) (was 755 ILCS 50/8)

3 Sec. 5-45. Rights and Duties at Death.

4 (a) The donee may accept or reject the gift. If the donee
5 accepts a gift of the entire body, he may, subject to the terms
6 of the gift, authorize embalming and the use of the body in
7 funeral services, unless a person named in subsection (b) of
8 Section 5-5 has requested, prior to the final disposition by
9 the donee, that the remains of said body be returned to his or
10 her custody for the purpose of final disposition. Such request
11 shall be honored by the donee if the terms of the gift are
12 silent on how final disposition is to take place. If the gift
13 is of a part of the body, the donee or technician designated by
14 him upon the death of the donor and prior to embalming, shall
15 cause the part to be removed without unnecessary mutilation and
16 without undue delay in the release of the body for the purposes
17 of final disposition. After removal of the part, custody of the
18 remainder of the body vests in the surviving spouse, next of
19 kin, or other persons under obligation to dispose of the body,
20 in the order or priority listed in subsection (b) of Section
21 5-5 of this Act.

22 (b) The time of death shall be determined by a physician
23 who attends the donor at his death, or, if none, the physician
24 who certifies the death. The physician shall not participate in
25 the procedures for removing or transplanting a part.

26 (c) A person who acts in good faith in accord with the
27 terms of this Act, the Illinois Vehicle Code, and the AIDS
28 Confidentiality Act, or the anatomical gift laws of another
29 state or a foreign country, is not liable for damages in any
30 civil action or subject to prosecution in any criminal
31 proceeding for his act. Any person that participates in good
32 faith and according to the usual and customary standards of
33 medical practice in the preservation, removal, or
34 transplantation of any part of a decedent's body pursuant to an
35 anatomical gift made by the decedent under Section 5-20 of this

1 Act or pursuant to an anatomical gift made by an individual as
2 authorized by subsection (b) of Section 5-5 of this Act shall
3 have immunity from liability, civil, criminal, or otherwise,
4 that might result by reason of such actions. For the purpose of
5 any proceedings, civil or criminal, the validity of an
6 anatomical gift executed pursuant to Section 5-20 of this Act
7 shall be presumed and the good faith of any person
8 participating in the removal or transplantation of any part of
9 a decedent's body pursuant to an anatomical gift made by the
10 decedent or by another individual authorized by the Act shall
11 be presumed.

12 (d) This Act is subject to the provisions of "An Act to
13 revise the law in relation to coroners", approved February 6,
14 1874, as now or hereafter amended, to the laws of this State
15 prescribing powers and duties with respect to autopsies, and to
16 the statutes, rules, and regulations of this State with respect
17 to the transportation and disposition of deceased human bodies.

18 (e) If the donee is provided information, or determines
19 through independent examination, that there is evidence that
20 the gift was exposed to the human immunodeficiency virus (HIV)
21 or any other identified causative agent of acquired
22 immunodeficiency syndrome (AIDS), the donee may reject the gift
23 and shall treat the information and examination results as a
24 confidential medical record; the donee may disclose only the
25 results confirming HIV exposure, and only to the physician of
26 the deceased donor. The donor's physician shall determine
27 whether the person who executed the gift should be notified of
28 the confirmed positive test result.

29 (Source: P.A. 93-794, eff. 7-22-04; 94-75, eff. 1-1-06.)