



Rep. Tom Cross

Filed: 2/23/2006

09400HB5259ham002

LRB094 17646 WGH 56377 a

1 AMENDMENT TO HOUSE BILL 5259

2 AMENDMENT NO. _____. Amend House Bill 5259 by replacing
3 everything after the enacting clause with the following:

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.

1 (b-1) A gift under Section 5-5 (a) may also be made by an
2 individual consenting to have his or her name included in the
3 First Person Consent organ and tissue donor registry maintained
4 by the Secretary of State under Section 6-117 of the Illinois
5 Vehicle Code. An individual's consent to have his or her name
6 included in the First Person Consent organ and tissue donor
7 registry constitutes full legal authority for the donation of
8 any of his or her organs or tissue. Consenting to be included
9 in the First Person Consent organ and tissue donor registry is
10 effective without regard to the presence or signature of
11 witnesses.

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

22 (d) Notwithstanding Section 5-45 (b), the donor may
23 designate in his will, card, or other document of gift the
24 surgeon or physician to carry out the appropriate procedures.
25 In the absence of a designation or if the designee is not
26 available, the donee or other person authorized to accept the
27 gift may employ or authorize any surgeon or physician for the
28 purpose.

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

32 (f) When there is a suitable candidate for organ donation
33 and a donation or consent to donate has not yet been given,
34 procedures to preserve the decedent's body for possible organ

1 and tissue donation may be implemented under the authorization
2 of the applicable organ procurement agency, at its own expense,
3 prior to making a donation request pursuant to Section 5-25. If
4 the organ procurement agency does not locate a person
5 authorized to consent to donation or consent to donation is
6 denied, then procedures to preserve the decedent's body shall
7 be ceased and no donation shall be made.

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

9 (755 ILCS 50/5-45) (was 755 ILCS 50/8)

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

11 (a) The donee may accept or reject the gift. If the donee
12 accepts a gift of the entire body, he may, subject to the terms
13 of the gift, authorize embalming and the use of the body in
14 funeral services, unless a person named in subsection (b) of
15 Section 5-5 has requested, prior to the final disposition by
16 the donee, that the remains of said body be returned to his or
17 her custody for the purpose of final disposition. Such request
18 shall be honored by the donee if the terms of the gift are
19 silent on how final disposition is to take place. If the gift
20 is of a part of the body, the donee or technician designated by
21 him upon the death of the donor and prior to embalming, shall
22 cause the part to be removed without unnecessary mutilation and
23 without undue delay in the release of the body for the purposes
24 of final disposition. After removal of the part, custody of the
25 remainder of the body vests in the surviving spouse, next of
26 kin, or other persons under obligation to dispose of the body,
27 in the order or priority listed in subsection (b) of Section
28 5-5 of this Act.

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

33 (c) A person who acts in good faith in accord with the

1 terms of this Act, the Illinois Vehicle Code, and the AIDS
2 Confidentiality Act, or the anatomical gift laws of another
3 state or a foreign country, is not liable for damages in any
4 civil action or subject to prosecution in any criminal
5 proceeding for his act. Any person that participates in good
6 faith and according to the usual and customary standards of
7 medical practice in the preservation, removal, or
8 transplantation of any part of a decedent's body pursuant to an
9 anatomical gift made by the decedent under Section 5-20 of this
10 Act or pursuant to an anatomical gift made by an individual as
11 authorized by subsection (b) of Section 5-5 of this Act shall
12 have immunity from liability, civil, criminal, or otherwise,
13 that might result by reason of such actions. For the purpose of
14 any proceedings, civil or criminal, the validity of an
15 anatomical gift executed pursuant to Section 5-20 of this Act
16 shall be presumed and the good faith of any person
17 participating in the removal or transplantation of any part of
18 a decedent's body pursuant to an anatomical gift made by the
19 decedent or by another individual authorized by the Act shall
20 be presumed.

21 (d) This Act is subject to the provisions of "An Act to
22 revise the law in relation to coroners", approved February 6,
23 1874, as now or hereafter amended, to the laws of this State
24 prescribing powers and duties with respect to autopsies, and to
25 the statutes, rules, and regulations of this State with respect
26 to the transportation and disposition of deceased human bodies.

27 (e) If the donee is provided information, or determines
28 through independent examination, that there is evidence that
29 the gift was exposed to the human immunodeficiency virus (HIV)
30 or any other identified causative agent of acquired
31 immunodeficiency syndrome (AIDS), the donee may reject the gift
32 and shall treat the information and examination results as a
33 confidential medical record; the donee may disclose only the
34 results confirming HIV exposure, and only to the physician of

1 the deceased donor. The donor's physician shall determine
2 whether the person who executed the gift should be notified of
3 the confirmed positive test result.

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