

1 AN ACT concerning civil law.

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 1-5, 1-10, 5-5, 5-15, 5-20, 5-25, 5-27, 5-35,
6 5-45, and 5-50 and by adding Sections 5-7, 5-12, 5-42, 5-43,
7 5-47, and 5-55 as follows:

8 (755 ILCS 50/1-5)

9 Sec. 1-5. Purpose. Illinois recognizes that there is a
10 critical shortage of human organs and tissues available to
11 citizens in need of organ and tissue transplants. This shortage
12 leads to the untimely death of many adults and children in
13 Illinois and across the nation each year. This Act is intended
14 to implement the public policy of encouraging timely donation
15 of human organs and tissue in Illinois, ~~and~~ facilitating
16 transplantation ~~transplants~~ of those organs and tissue into
17 patients in need of them, and encouraging anatomical gifts for
18 therapy, research, or education. Through this Act, laws
19 relating to organ and tissue donation and transplantation are
20 consolidated and modified for the purpose of furthering this
21 public policy, and for the purpose of establishing consistency
22 between this Act and the core provisions of the Revised Uniform
23 Anatomical Gift Act drafted by the National Conference of

1 Commissioners on Uniform State Laws.

2 (Source: P.A. 93-794, eff. 7-22-04.)

3 (755 ILCS 50/1-10) (was 755 ILCS 50/2)

4 Sec. 1-10. Definitions.

5 ~~"Bank or storage facility" means a facility licensed,~~
6 ~~accredited or approved under the laws of any state for storage~~
7 ~~of human bodies or parts thereof.~~

8 "Close friend" means any person 18 years of age or older
9 who has exhibited special care and concern for the decedent and
10 who presents an affidavit to the decedent's attending
11 physician, or the hospital administrator or his or her
12 designated representative, stating that he or she (i) was a
13 close friend of the decedent, (ii) is willing and able to
14 consent to the donation, and (iii) maintained such regular
15 contact with the decedent as to be familiar with the decedent's
16 health and social history, and religious and moral beliefs. The
17 affidavit must also state facts and circumstances that
18 demonstrate that familiarity.

19 "Death" means, for the purposes of the Act, when, according
20 to accepted medical standards, there is (i) an irreversible
21 cessation of circulatory and respiratory functions; or (ii) an
22 irreversible cessation of all functions of the entire brain,
23 including the brain stem ~~the irreversible cessation of total~~
24 ~~brain function, according to usual and customary standards of~~
25 ~~medical practice.~~

1 "Decedent" means a deceased individual and includes a
2 stillborn infant or fetus.

3 "Disinterested witness" means a witness other than the
4 spouse, child, parent, sibling, grandchild, grandparent, or
5 guardian of the individual who makes, amends, revokes, or
6 refuses to make an anatomical gift, or another adult who
7 exhibited special care and concern for the individual. The term
8 does not include a person to whom an anatomical gift could pass
9 under Section 5-10 of this Act.

10 "Document of Gift" means a donor card or other record used
11 to make an anatomical gift. The term includes a donor registry.

12 "Donor" means an individual whose body or part is the
13 subject of an anatomical gift. ~~who makes a gift of all or parts~~
14 ~~of his body.~~

15 ~~"Federally designated organ procurement agency" means the~~
16 ~~organ procurement agency designated by the Secretary of the~~
17 ~~U.S. Department of Health and Human Services for the service~~
18 ~~area in which a hospital is located, or the organ procurement~~
19 ~~agency for which the U.S. Secretary of Health and Human~~
20 ~~Services has granted the hospital a waiver pursuant to 42~~
21 ~~U.S.C. 1320b-8(a).~~

22 "Hospital" means a hospital licensed, accredited or
23 approved under the laws of any state; and includes a hospital
24 operated by the United States government, a state, or a
25 subdivision thereof, although not required to be licensed under
26 state laws.

1 "Non-transplant anatomic bank" means any facility or
2 program operating or providing services in this State that is
3 accredited by the American Association of Tissue Banks and that
4 is involved in procuring, furnishing, or distributing whole
5 bodies or parts for the purpose of medical education. For
6 purposes of this Section, a non-transplant anatomic bank
7 operating under the auspices of a hospital, accredited medical
8 school, dental school, college or university, or federally
9 designated organ procurement organization is not required to be
10 accredited by the American Association of Tissue Banks.

11 ~~"Not available" for the giving of consent or refusal means:~~

12 ~~(1) the existence of the person is unknown to the hospital~~
13 ~~administrator or designee, organ procurement agency, or tissue~~
14 ~~bank and is not readily ascertainable through the examination~~
15 ~~of the decedent's hospital records and the questioning of any~~
16 ~~persons who are available for giving consent;~~

17 ~~(2) the administrator or designee, organ procurement~~
18 ~~agency, or tissue bank has unsuccessfully attempted to contact~~
19 ~~the person by telephone or in any other reasonable manner; or~~

20 ~~(3) the person is unable or unwilling to respond in a~~
21 ~~manner that indicates the person's refusal or consent.~~

22 "Organ" means a human kidney, liver, heart, lung, pancreas,
23 small bowel, or other transplantable vascular body part as
24 determined by the Organ Procurement and Transplantation
25 Network, as periodically selected by the U.S. Department of
26 Health and Human Services.

1 "Organ procurement organization" means the organ
2 procurement organization designated by the Secretary of the
3 U.S. Department of Health and Human Services for the service
4 area in which a hospital is located, or the organ procurement
5 organization for which the Secretary of the U.S. Department of
6 Health and Human Services has granted the hospital a waiver
7 pursuant to 42 U.S.C. 1320b-8(a).

8 "Procurement organization" means an organ procurement
9 organization or a tissue bank.

10 "Reasonably available for the giving of consent or refusal"
11 means a person who is able to be contacted by a procurement
12 organization without undue effort and who is willing and able
13 to act in a timely manner consistent with existing medical
14 criteria necessary for the making of an anatomical gift.

15 "Tissue" means eyes, bones, heart valves, veins, skin, and
16 any other portions of a human body excluding blood, blood
17 products or organs.

18 "Part" means organs, tissues, eyes, bones, arteries,
19 blood, other fluids and any other portions of a human body.

20 "Person" means an individual, corporation, government or
21 governmental subdivision or agency, business trust, estate,
22 trust, partnership or association or any other legal entity.

23 "Physician" or "surgeon" means a physician or surgeon
24 licensed or authorized to practice medicine in all of its
25 branches under the laws of any state.

26 "State" includes any state, district, commonwealth,

1 territory, insular possession, and any other area subject to
2 the legislative authority of the United States of America.

3 "Technician" means an individual trained and certified to
4 remove tissue, by a recognized medical training institution in
5 the State of Illinois.

6 "Tissue bank" means any facility or program operating in
7 Illinois that is accredited ~~certified~~ by the American
8 Association of Tissue Banks, the Eye Bank Association of
9 America, or the Association of Organ Procurement Organizations
10 and is involved in procuring, furnishing, donating, or
11 distributing corneas, bones, or other human tissue for the
12 purpose of injecting, transfusing, or transplanting any of them
13 into the human body, or for research or education. "Tissue
14 bank" does not include a licensed blood bank. For the purposes
15 of this Act, "tissue" does not include organs or blood or blood
16 products.

17 (Source: P.A. 93-794, eff. 7-22-04.)

18 (755 ILCS 50/5-5) (was 755 ILCS 50/3)

19 Sec. 5-5. Persons who may execute an anatomical gift.

20 (a) An anatomical gift of a donor's body or part may be
21 made during the life of the donor for the purpose of
22 transplantation, therapy, research, or education by:

23 (1) the donor, if the donor is an adult or if the donor
24 is an emancipated minor;

25 (2) an agent of the donor, unless the power of attorney

1 for health care or other record prohibits the agent from
2 making an anatomical gift;

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

5 (4) the donor's guardian.

6 ~~Any individual of sound mind who has attained the age of 18~~
7 ~~may give all or any part of his or her body for any purpose~~
8 ~~specified in Section 5-10. Such a gift may be executed in any~~
9 ~~of the ways set out in Section 5-20, and shall take effect upon~~
10 ~~the individual's death without the need to obtain the consent~~
11 ~~of any survivor. An anatomical gift made by an agent of an~~
12 ~~individual, as authorized by the individual under the Powers of~~
13 ~~Attorney for Health Care Law, as now or hereafter amended, is~~
14 ~~deemed to be a gift by that individual and takes effect without~~
15 ~~the need to obtain the consent of any other person.~~

16 (b) If no gift has been executed under subsection (a), an
17 anatomical gift of a decedent's body or part for the purpose of
18 transplantation, therapy, research, or education may be made at
19 the time of the decedent's death, or when death is imminent, by
20 a member of the following classes of persons who is reasonably
21 available for the giving of consent or refusal, in the order of
22 priority listed ~~any of the following persons, in the order of~~
23 ~~priority stated in items (1) through (11) below,~~ when persons
24 in prior classes are not available for the giving of consent or
25 refusal and in the absence of ~~(i)~~ actual notice of contrary
26 intentions by the decedent and ~~(ii)~~ actual notice of opposition

1 ~~by any member within the same priority class, may consent to~~
2 ~~give all or any part of the decedent's body after or~~
3 ~~immediately before death to a person who may become a donee for~~
4 ~~any purpose specified in Section 5-10:~~

5 (1) the guardian of the person of the decedent;

6 (2) the spouse or civil union partner of the decedent;

7 (3) an adult child of the decedent;

8 (4) a parent of the decedent;

9 (5) an adult sibling of the decedent;

10 (6) an adult grandchild of the decedent;

11 (7) a grandparent of the decedent;

12 (8) a close friend of the decedent; and

13 (9) the guardian of the estate of the decedent.

14 ~~(1) an individual acting as the decedent's agent under~~
15 ~~a power of attorney for health care,~~

16 ~~(2) the decedent's surrogate decision maker identified~~
17 ~~by the attending physician in accordance with the Health~~
18 ~~Care Surrogate Act,~~

19 ~~(3) the guardian of the decedent's person at the time~~
20 ~~of death,~~

21 ~~(4) the decedent's spouse,~~

22 ~~(5) any of the decedent's adult sons or daughters,~~

23 ~~(6) either of the decedent's parents,~~

24 ~~(7) any of the decedent's adult brothers or sisters,~~

25 ~~(8) any adult grandchild of the decedent,~~

26 ~~(9) a close friend of the decedent,~~

1 ~~(10) the guardian of the decedent's estate,~~

2 ~~(11) any other person authorized or under legal~~
3 ~~obligation to dispose of the body.~~

4 ~~If the donee has actual notice of opposition to the gift by~~
5 ~~the decedent or any person in the highest priority class in~~
6 ~~which an available person can be found, then no gift of all or~~
7 ~~any part of the decedent's body shall be accepted.~~

8 (b-5) If there is more than one member of a class listed in
9 items (1), (3), (4), (5), (6), (7), or (9) of subsection (b) of
10 this Section entitled to make an anatomical gift, an anatomical
11 gift may be made by a member of the class unless that member or
12 a person to which the gift may pass under Section 5-12 of this
13 Act knows of an objection by another member of the class. If an
14 objection is known, the gift may be made only by a majority of
15 the members of the class who are reasonably available for the
16 giving of consent or refusal.

17 (b-10) A person may not make an anatomical gift if, at the
18 time of the decedent's death, a person in a higher priority
19 class under subsection (b) of this Section is reasonably
20 available for the giving of consent or refusal.

21 (c) A gift of all or part of a body authorizes any blood or
22 tissue test or minimally invasive examination necessary to
23 assure medical acceptability of the gift for the purposes
24 intended. The hospital may not withdraw any measures that are
25 necessary to maintain the medical suitability of the part until
26 the procurement organization has had the opportunity to advise

1 the applicable persons as set forth in this Act of the option
2 to make an anatomical gift or has ascertained that the
3 individual expressed a contrary intent. The results of tests
4 and examinations under this subsection shall be used or
5 disclosed only for purposes of evaluating medical suitability
6 for donation, to facilitate the donation process, and as
7 required or permitted by existing law.

8 (d) The rights of the donee created by the gift are
9 paramount to the rights of others except as provided by Section
10 5-45(d).

11 (e) If no gift has been executed under this Act, then no
12 part of the decedent's body may be used for any purpose
13 specified in this Act.

14 (Source: P.A. 92-349, eff. 1-1-02; 93-794, eff. 7-22-04.)

15 (755 ILCS 50/5-7 new)

16 Sec. 5-7. Preclusive effect of anatomical gift, amendment,
17 or revocation.

18 (a) Subject to subsection (f) of this Section, in the
19 absence of an express, contrary indication by the donor, a
20 person other than the donor is barred from changing, amending,
21 or revoking an anatomical gift of a donor's body or part if the
22 donor made an anatomical gift of the donor's body or part under
23 Section 5-20 of this Act or an amendment to an anatomical gift
24 of the donor's body or part under Section 5-42 of this Act.

25 (b) A donor's revocation of an anatomical gift of the

1 donor's body or part under Section 5-42 of this Act is not a
2 refusal and does not bar another person specified in subsection
3 (a) or (b) of Section 5-5 of this Act from making an anatomical
4 gift of the donor's body or part under subsection (a), (b),
5 (b-5), (b-10), (e), or (e-5) of Section 5-20 of this Act.

6 (c) If a person other than the donor makes an unrevoked
7 anatomical gift of the donor's body or part under subsection
8 (a), (b), (b-5) or (b-10) of Section 5-20 of this Act, or an
9 amendment to an anatomical gift of the donor's body or part
10 under Section 5-42 of this Act, another person may not make,
11 amend, or revoke the gift of the donor's body or part under
12 subsection (e) or (e-5) of Section 5-20 of this Act.

13 (d) A revocation of an anatomical gift of a donor's body or
14 part under Section 5-42 of this Act by a person other than the
15 donor does not bar another person from making an anatomical
16 gift of the body or part under subsection (a), (b), (b-5),
17 (b-10), (e), or (e-5) of Section 5-20 of this Act.

18 (e) In the absence of an express, contrary indication by
19 the donor or other person authorized to make an anatomical gift
20 under subsection (a) of Section 5-5 of this Act, an anatomical
21 gift of a part is neither a refusal to give another part nor a
22 limitation on the making of an anatomical gift of another part
23 at a later time by the donor or another person.

24 (f) In the absence of an express, contrary indication by
25 the donor or other person authorized to make an anatomical gift
26 under subsection (a) of Section 5-5 of this Act, an anatomical

1 gift of a part for one or more of the purposes set forth in
2 subsection (a) of Section 5-5 of this Act is not a limitation
3 on the making of an anatomical gift of the part for any of the
4 other purposes by the donor or any other person under
5 subsection (a), (b), (b-5), (b-10), (e), or (e-5) of Section
6 5-20 of this Act.

7 (755 ILCS 50/5-12 new)

8 Sec. 5-12. Persons who may receive an anatomical gift;
9 purpose of anatomical gift.

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

12 (1) for research or education, a hospital; an
13 accredited medical school, dental school, college, or
14 university; an organ procurement organization; or other
15 appropriate person;

16 (2) subject to subsection (b) of this Section, an
17 individual designated by the person making the anatomical
18 gift if the individual is the recipient of the part;

19 (3) an eye bank or tissue bank; or

20 (4) for research or education, a non-transplant
21 anatomic bank.

22 (b) If an anatomical gift to an individual under item (2)
23 of subsection (a) of this Section cannot be transplanted into
24 the individual, the part passes in accordance with subsection
25 (g) of this Section unless there is an express, contrary

1 indication by the person making the anatomical gift.

2 (c) If an anatomical gift of one or more specific parts or
3 of all parts is made in a document of gift that does not name a
4 person described in subsection (a) of this Section, but
5 identifies the purpose for which an anatomical gift may be
6 used, the following rules apply:

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

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

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

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

20 (d) For the purpose of subsection (c) of this Section, if
21 there is more than one purpose of an anatomical gift set forth
22 in the document of gift but the purposes are not set forth in
23 any priority, and if the gift cannot be used for
24 transplantation or therapy, the gift may be used for research
25 or education.

26 (e) If an anatomical gift of one or more specific parts is

1 made in a document of gift that does not name a person
2 described in subsection (a) of this Section and does not
3 identify the purpose of the gift, the gift may be used only for
4 transplantation or therapy or research, and the gift passes in
5 accordance with subsection (g) of this Section.

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

12 (g) For purposes of subsections (b), (e), and (f) of this
13 Section, the following rules apply:

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

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

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

21 (h) An anatomical gift of an organ for transplantation or
22 therapy, other than an anatomical gift under item (2) of
23 subsection (a) of this Section, passes to the organ procurement
24 organization as custodian of the organ.

25 (i) If an anatomical gift does not pass under this Section
26 or the decedent's body or part is not used for transplantation,

1 therapy, research, or education, custody of the body or part
2 passes to the person under obligation to dispose of the body or
3 part.

4 (j) A person may not accept an anatomical gift if the
5 person knows that the gift was not effectively made under
6 Section 5-5 or subsection (e) or (e-5) of Section 5-20 of this
7 Act or if the person knows that the decedent made a refusal
8 under Section 5-47 of this Act that was not revoked. For
9 purposes of this subsection, if a person knows that an
10 anatomical gift was made on a document of gift, the person is
11 deemed to know of any amendment or revocation of the gift or
12 any refusal to make an anatomical gift on the same document of
13 gift.

14 (k) Except as otherwise provided in item (2) of subsection
15 (a) of this Section, nothing in this Act affects the allocation
16 of organs for transplantation or therapy.

17 (755 ILCS 50/5-15) (was 755 ILCS 50/4.5)

18 Sec. 5-15. Disability of recipient.

19 (a) No hospital, physician and surgeon, procurement
20 organization ~~bank or storage facility~~, or other person shall
21 determine the ultimate recipient of an anatomical gift based
22 upon a potential recipient's physical or mental disability,
23 except to the extent that the physical or mental disability has
24 been found by a physician and surgeon, following a case-by-case
25 evaluation of the potential recipient, to be medically

1 significant to the provision of the anatomical gift.

2 (b) Subsection (a) shall apply to each part of the organ
3 transplant process.

4 (c) The court shall accord priority on its calendar and
5 handle expeditiously any action brought to seek any remedy
6 authorized by law for purposes of enforcing compliance with
7 this Section.

8 (d) This Section shall not be deemed to require referrals
9 or recommendations for or the performance of medically
10 inappropriate organ transplants.

11 (e) As used in this Section "disability" has the same
12 meaning as in the federal Americans with Disabilities Act of
13 1990 (42 U.S.C. 12101 et seq., Public Law 101-336) as may be
14 amended from time to time.

15 (Source: P.A. 93-794, eff. 7-22-04.)

16 (755 ILCS 50/5-20) (was 755 ILCS 50/5)

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

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

19 (1) by authorizing a statement or symbol indicating
20 that the donor has made an anatomical gift to be imprinted
21 on the donor's driver's license or identification card;

22 (2) in a will;

23 (3) during a terminal illness or injury of the donor,
24 by any form of communication addressed to at least 2
25 adults, at least one of whom is a disinterested witness; or

1 (4) as provided in subsection (b) of this Section.

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

8 (b) A donor or other person authorized to make an
9 anatomical gift under subsection (a) of Section 5-5 of this Act
10 may make a gift by a donor card or other record signed by the
11 donor or other person making the gift or by authorizing that a
12 statement or symbol indicating that the donor has made an
13 anatomical gift be included on a donor registry. If the donor
14 or other person is physically unable to sign a record, the
15 record may be signed by another individual at the direction of
16 the donor or other person and must:

17 (1) be witnessed by at least 2 adults, at least one of
18 whom is a disinterested witness, who have signed at the
19 request of the donor or the other person; and

20 (2) state that it has been signed and witnessed as
21 provided in paragraph (1) of this subsection (b).

22 ~~A gift of all or part of the body under Section 5-5 (a) may~~
23 ~~also be made by a written, signed document other than a will.~~
24 ~~The gift becomes effective upon the death of the donor. The~~
25 ~~document, which may be a card or a valid driver's license~~
26 ~~designed to be carried on the person, is effective without~~

1 ~~regard to the presence or signature of witnesses. Such a gift~~
2 ~~may also be made by properly executing the form provided by the~~
3 ~~Secretary of State on the reverse side of the donor's driver's~~
4 ~~license pursuant to subsection (b) of Section 6-110 of The~~
5 ~~Illinois Vehicle Code. Delivery of the document of gift during~~
6 ~~the donor's lifetime is not necessary to make the gift valid.~~

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

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

22 (b-10) An anatomical gift made by will takes effect upon
23 the donor's death whether or not the will is probated.
24 Invalidation of the will after the donor's death does not
25 invalidate the gift.

26 (c) The anatomical gift may be made to a specified donee or

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

10 (d) The donee or other person authorized to accept the gift
11 may employ or authorize any qualified technician, surgeon, or
12 physician to perform the recovery. ~~Notwithstanding Section~~
13 ~~5-45 (b), the donor may designate in his will, card, or other~~
14 ~~document of gift the surgeon or physician to carry out the~~
15 ~~appropriate procedures. In the absence of a designation or if~~
16 ~~the designee is not available, the donee or other person~~
17 ~~authorized to accept the gift may employ or authorize any~~
18 ~~surgeon or physician for the purpose.~~

19 (e) A person authorized to make an anatomical gift under
20 subsection (b) of Section 5-5 of this Act may make an
21 anatomical gift by a document of gift signed by the person
22 making the gift or by that person's oral communication that is
23 electronically recorded or is contemporaneously reduced to a
24 record and signed by the individual receiving the oral
25 communication. ~~Any gift by a person designated in Section 5-5~~
26 ~~(b) shall be made by a document signed by him or made by his~~

1 ~~telegraphic, recorded telephonic, or other recorded message.~~

2 (e-5) An anatomical gift by a person authorized under
3 subsection (b) of Section 5-5 of this Act may be amended or
4 revoked orally or in a record by a member of a prior class who
5 is reasonably available for the giving of consent or refusal.
6 If more than one member of the prior class is reasonably
7 available for the giving of consent or refusal, the gift made
8 by a person authorized under subsection (b) of Section 5-5 of
9 this Act may be:

10 (1) amended only if a majority of the class members
11 reasonably available for the giving of consent or refusal
12 agree to the amending of the gift; or

13 (2) revoked only if a majority of the class members
14 reasonably available for the giving of consent or refusal
15 agree to the revoking of the gift or if they are equally
16 divided as to whether to revoke the gift.

17 (e-10) A revocation under subsection (e-5) is effective
18 only if, before an incision has been made to remove a part from
19 the donor's body or before invasive procedures have been
20 commenced to prepare the recipient, the procurement
21 organization, non-transplant anatomic bank, transplant
22 hospital, or physician or technician knows of the revocation.

23 (f) When there is a suitable candidate for organ donation
24 and a donation or consent to donate has not yet been given,
25 procedures to preserve the decedent's body for possible organ
26 and tissue donation may be implemented under the authorization

1 of the applicable organ procurement organization ~~agency~~, at its
2 own expense, prior to making a donation request pursuant to
3 Section 5-25. If the organ procurement organization ~~agency~~ does
4 not locate a person authorized to consent to donation or
5 consent to donation is denied, then procedures to preserve the
6 decedent's body shall be ceased and no donation shall be made.
7 The organ procurement organization ~~agency~~ shall respect the
8 religious tenets of the decedent, if known, such as a pause
9 after death, before initiating preservation services. Nothing
10 in this Section shall be construed to authorize interference
11 with the coroner in carrying out an investigation or autopsy.

12 (Source: P.A. 93-794, eff. 7-22-04; 94-75, eff. 1-1-06; 94-920,
13 eff. 1-1-07.)

14 (755 ILCS 50/5-25)

15 Sec. 5-25. Notification; consent.

16 (a) Each hospital in this State shall enter into agreements
17 or affiliations with procurement organizations for
18 coordination of procurement and use of anatomical gifts. ~~When,~~
19 ~~based upon generally accepted medical standards, an inpatient~~
20 ~~in a general acute care hospital with more than 100 beds is a~~
21 ~~suitable candidate for organ or tissue donation and the patient~~
22 ~~has not made an anatomical gift of all or any part of his or her~~
23 ~~body pursuant to Section 5-20 of this Act, the hospital~~

24 (b) Hospitals shall proceed in accordance with the
25 applicable requirements of 42 CFR 482.45 or any successor

1 provisions of federal statute or regulation, as may be amended
2 from time to time, with regard to collaboration with
3 procurement organizations to facilitate organ, tissue, and eye
4 donation ~~and the written agreement between the hospital and the~~
5 ~~applicable organ procurement agency executed thereunder.~~

6 ~~(b)~~ In making a request for organ or tissue donation, the
7 hospital or the hospital's federally designated organ
8 procurement organization ~~agency~~ or tissue bank shall request
9 any of the ~~following~~ persons, in the order of priority stated
10 in items (1) through (9) ~~(11)~~ below, when persons in prior
11 classes are not available and in the absence of (i) actual
12 notice of contrary intentions by the decedent, (ii) actual
13 notice of opposition by any member within the same priority
14 class, and (iii) reason to believe that an anatomical gift is
15 contrary to the decedent's religious beliefs, to consent to the
16 gift of all or any part of the decedent's body for any purpose
17 specified in Section 5-12 ~~5-10~~ of this Act:

18 (1) the guardian of the person of the decedent;

19 (2) the spouse or civil union partner of the decedent;

20 (3) an adult child of the decedent;

21 (4) a parent of the decedent;

22 (5) an adult sibling of the decedent;

23 (6) an adult grandchild of the decedent;

24 (7) a grandparent of the decedent;

25 (8) a close friend of the decedent; and

26 (9) the guardian of the estate of the decedent.

1 ~~(1) an individual acting as the decedent's agent under~~
2 ~~a power of attorney for health care;~~

3 ~~(2) the decedent's surrogate decision maker identified~~
4 ~~by the attending physician in accordance with the Health~~
5 ~~Care Surrogate Act;~~

6 ~~(3) the guardian of the decedent's person at the time~~
7 ~~of death;~~

8 ~~(4) the decedent's spouse;~~

9 ~~(5) any of the decedent's adult sons or daughters;~~

10 ~~(6) either of the decedent's parents;~~

11 ~~(7) any of the decedent's adult brothers or sisters;~~

12 ~~(8) any adult grandchild of the decedent;~~

13 ~~(9) a close friend of the decedent;~~

14 ~~(10) the guardian of the decedent's estate; or~~

15 ~~(11) any other person authorized or under legal~~
16 ~~obligation to dispose of the body.~~

17 (c) (Blank). ~~If (1) the hospital, the applicable organ~~
18 ~~procurement agency, or the tissue bank has actual notice of~~
19 ~~opposition to the gift by the decedent or any person in the~~
20 ~~highest priority class in which an available person can be~~
21 ~~found, or (2) there is reason to believe that an anatomical~~
22 ~~gift is contrary to the decedent's religious beliefs, or (3)~~
23 ~~the Director of Public Health has adopted a rule signifying his~~
24 ~~or her determination that the need for organs and tissues for~~
25 ~~donation has been adequately met, then the gift of all or any~~
26 ~~part of the decedent's body shall not be requested. If a~~

1 ~~donation is requested, consent or refusal may be obtained only~~
2 ~~from the person or persons in the highest priority class~~
3 ~~available. If the hospital administrator, or his or her~~
4 ~~designated representative, the designated organ procurement~~
5 ~~agency, or the tissue bank is unable to obtain consent from any~~
6 ~~of the persons named in items (1) through (11) of subsection~~
7 ~~(b) of this Section, the decedent's body shall not be used for~~
8 ~~an anatomical gift unless a valid anatomical gift document was~~
9 ~~executed under this Act.~~

10 (d) (Blank). ~~When there is a suitable candidate for organ~~
11 ~~donation, as described in subsection (a), or if consent to~~
12 ~~remove organs and tissues is granted, the hospital shall notify~~
13 ~~the applicable federally designated organ procurement agency.~~
14 ~~The federally designated organ procurement agency shall notify~~
15 ~~any tissue bank specified by the hospital of the suitable~~
16 ~~candidate for tissue donation. The organ procurement agency~~
17 ~~shall collaborate with all tissue banks in Illinois to maximize~~
18 ~~tissue procurement in a timely manner.~~

19 (Source: P.A. 93-794, eff. 7-22-04.)

20 (755 ILCS 50/5-27) (was 755 ILCS 60/3.5)

21 Sec. 5-27. Notification of patient; family rights and
22 options after circulatory death.

23 (a) In this Section, "donation after circulatory eardiae
24 death" means the donation of organs from a ~~ventilated~~ patient
25 whose death is declared based upon cardio-pulmonary, and not

1 neurological, criteria, following the implementation of the
2 decision to withdraw life support ~~without a certification of~~
3 ~~brain death and with a do not resuscitate order, if a decision~~
4 ~~has been reached by the physician and the family to withdraw~~
5 ~~life support and if the donation does not occur until after the~~
6 ~~declaration of cardiac death.~~

7 (b) If (i) a potential organ donor, or an individual given
8 authority under subsection (b) of Section 5-25 to consent to an
9 organ donation, expresses an interest in organ donation, (ii)
10 there has not been a certification of brain death for the
11 potential donor, and (iii) the potential donor is a patient at
12 a hospital that does not allow donation after circulatory
13 ~~cardiac~~ death, then the organ procurement organization ~~agency~~
14 shall inform the patient or the individual given authority to
15 consent to organ donation that the hospital does not allow
16 donation after circulatory ~~cardiac~~ death.

17 (c) In addition to providing oral notification, the organ
18 procurement organization ~~agency~~ shall develop a written form
19 that indicates to the patient or the individual given authority
20 to consent to organ donation, at a minimum, the following
21 information:

22 (1) That the patient or the individual given authority
23 to consent to organ donation has received literature and
24 has been counseled by (representative's name) of the (organ
25 procurement organization ~~agency~~ name).

26 (2) That all organ donation options have been explained

1 to the patient or the individual given authority to consent
2 to organ donation, including the option of donation after
3 circulatory ~~cardiac~~ death.

4 (3) That the patient or the individual given authority
5 to consent to organ donation is aware that the hospital
6 where the potential donor is a patient does not allow
7 donation after circulatory ~~cardiac~~ death.

8 (4) That the patient or the individual given authority
9 to consent to organ donation has been informed of the right
10 to request a patient transfer to a facility allowing
11 donation after circulatory ~~cardiac~~ death.

12 (5) That the patient or the individual given authority
13 to consent to organ donation has been informed of another
14 hospital that will allow donation after circulatory
15 ~~cardiac~~ death and will accept a patient transfer for the
16 purpose of donation after circulatory ~~cardiac~~ death; and
17 that the cost of transferring the patient to that other
18 hospital will be covered by the organ procurement
19 organization ~~agency~~, with no additional cost to the patient
20 or the individual given authority to consent to organ
21 donation.

22 The form required under this subsection must include a
23 place for the signatures of the patient or the individual given
24 authority to consent to organ donation and the representative
25 of the organ procurement organization ~~agency~~ and space to
26 provide the date that the form was signed.

1 (Source: P.A. 95-331, eff. 8-21-07.)

2 (755 ILCS 50/5-35) (was 755 ILCS 50/6)

3 Sec. 5-35. Delivery of Document of Anatomical Gift Not
4 Required; Right to Examine.

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

7 (b) Upon or after an individual's death, a person in
8 possession of a document of gift or a refusal to make an
9 anatomical gift with respect to the individual shall allow
10 examination and copying of the document of gift or refusal by a
11 person authorized to make or object to the making of an
12 anatomical gift with respect to the individual or by a person
13 to which the gift could pass under Section 5-12 of this Act.

14 ~~If the gift is made by the donor to a specified donee, the~~
15 ~~will, card, or other document, or an executed copy thereof, may~~
16 ~~be delivered to the donee to expedite the appropriate~~
17 ~~procedures immediately after death. Delivery is not necessary~~
18 ~~to the validity of the gift. The will, card, or other document,~~
19 ~~or an executed copy thereof, may be deposited in any hospital,~~
20 ~~bank or storage facility, or registry office that accepts it~~
21 ~~for safekeeping or for facilitation of procedures after death.~~
22 ~~On request of any interested party upon or after the donor's~~
23 ~~death, the person in possession shall produce the document for~~
24 ~~examination.~~

25 (Source: P.A. 93-794, eff. 7-22-04.)

1 (755 ILCS 50/5-42 new)

2 Sec. 5-42. Amending or revoking anatomical gift before
3 donor's death.

4 (a) Subject to Section 5-7 of this Act, a donor or other
5 person authorized to make an anatomical gift under subsection
6 (a) of Section 5-5 of this Act may amend or revoke an
7 anatomical gift by:

8 (1) a record signed by:

9 (A) the donor;

10 (B) the other authorized person; or

11 (C) subject to subsection (b) of this Section,
12 another individual acting at the direction of the donor
13 or the other person if the donor or other person is
14 physically unable to sign; 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) A record signed under subdivision (a)(1)(C) of this
19 Section must:

20 (1) be witnessed by at least 2 adults, at least one of
21 whom is a disinterested witness, who have signed at the
22 request of the donor or the other person; and

23 (2) state that it has been signed and witnessed as
24 provided in paragraph (1) of this subsection (b).

25 (c) Subject to Section 5-7 of this Act, a donor or other

1 person authorized to make an anatomical gift under subsection
2 (a) of Section 5-5 of this Act may revoke an anatomical gift by
3 the destruction or cancellation of the document of gift, or the
4 portion of the document of gift used to make the gift, with the
5 intent to revoke the gift.

6 (d) A donor may amend or revoke an anatomical gift that was
7 not made in a will by any form of communication during a
8 terminal illness or injury addressed to at least 2 adults, at
9 least one of whom is a disinterested witness.

10 (e) A donor who makes an anatomical gift in a will may
11 amend or revoke the gift in the manner provided for amendment
12 or revocation of wills or as provided in subsection (a) of this
13 Section.

14 (755 ILCS 50/5-43 new)

15 Sec. 5-43. Refusal to make anatomical gift; effect of
16 refusal.

17 (a) An individual may refuse to make an anatomical gift of
18 the individual's body or part by:

19 (1) a record signed by:

20 (A) the individual; or

21 (B) subject to subsection (b) of this Section,
22 another individual acting at the direction of the
23 individual if the individual is physically unable to
24 sign;

25 (2) the individual's will, whether or not the will is

1 admitted to probate or invalidated after the individual's
2 death; or

3 (3) any form of communication made by the individual
4 during the individual's terminal illness or injury
5 addressed to at least 2 adults, at least one of whom is a
6 disinterested witness.

7 (b) A record signed under subdivision (a)(1)(B) of this
8 Section must:

9 (1) be witnessed by at least 2 adults, at least one of
10 whom is a disinterested witness, who have signed at the
11 request of the individual; and

12 (2) state that it has been signed and witnessed as
13 provided in paragraph (1) of this subsection (b).

14 (c) An individual who has made a refusal may amend or
15 revoke the refusal:

16 (1) in the manner provided in subsection (a) of this
17 Section for making a refusal;

18 (2) by subsequently making an anatomical gift under
19 subsection (a), (b), (b-5) or (b-10) of Section 5-20 of this
20 Act that is inconsistent with the refusal; or

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

24 (d) In the absence of an express, contrary indication by
25 the individual set forth in the refusal, an individual's
26 unrevoked refusal to make an anatomical gift of the

1 individual's body or part bars all other persons from making an
2 anatomical gift of the individual's body or part.

3 (755 ILCS 50/5-45) (was 755 ILCS 50/8)

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

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

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

1 the procedures for removing or transplanting a part.

2 (c) A person who acts or attempts in good faith to act in
3 accordance with this Act or with the applicable anatomical gift
4 law of another state is not liable for the act in a civil
5 action, criminal prosecution, or administrative proceeding.
6 Neither the person making an anatomical gift nor the donor's
7 estate is liable for any injury or damage that results from the
8 making or use of the gift. In determining whether an anatomical
9 gift has been made, amended, or revoked under this Act, a
10 person may rely upon representations of an individual listed in
11 items (2), (3), (4), (5), (6), (7), or (8) of subsection (b) of
12 Section 5-5 of this Act relating to the individual's
13 relationship to the donor or prospective donor unless the
14 person knows that the representation is untrue. ~~A person who~~
15 ~~acts in good faith in accord with the terms of this Act, the~~
16 ~~Illinois Vehicle Code, and the AIDS Confidentiality Act, or the~~
17 ~~anatomical gift laws of another state or a foreign country, is~~
18 ~~not liable for damages in any civil action or subject to~~
19 ~~prosecution in any criminal proceeding for his act. Any person~~
20 ~~that participates in good faith and according to the usual and~~
21 ~~customary standards of medical practice in the preservation,~~
22 ~~removal, or transplantation of any part of a decedent's body~~
23 ~~pursuant to an anatomical gift made by the decedent under~~
24 ~~Section 5-20 of this Act or pursuant to an anatomical gift made~~
25 ~~by an individual as authorized by subsection (b) of Section 5-5~~
26 ~~of this Act shall have immunity from liability, civil,~~

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

9 (d) This Act is subject to the provisions of "An Act to
10 revise the law in relation to coroners", approved February 6,
11 1874, as now or hereafter amended, to the laws of this State
12 prescribing powers and duties with respect to autopsies, and to
13 the statutes, rules, and regulations of this State with respect
14 to the transportation and disposition of deceased human bodies.

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

26 (Source: P.A. 93-794, eff. 7-22-04; 94-75, eff. 1-1-06; 94-920,

1 eff. 1-1-07.)

2 (755 ILCS 50/5-47 new)

3 Sec. 5-47. Rights and duties of procurement organizations
4 and others.

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

11 (b) A procurement organization shall be allowed reasonable
12 access to information in the records of the Secretary of State
13 to ascertain whether an individual at or near death is a donor.

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

24 (d) Unless prohibited by law other than this Act, at any
25 time after a donor's death, the person to which a part passes

1 under Section 5-12 of this Act may conduct any reasonable
2 examination necessary to ensure the medical suitability of the
3 body or part for its intended purpose.

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

8 (f) Upon referral by a hospital under subsection (a) of
9 this Section, a procurement organization shall make a
10 reasonable search for any person listed in subsection (b) of
11 Section 5-5 of this Act having priority to make an anatomical
12 gift on behalf of a prospective donor. If a procurement
13 organization receives information that an anatomical gift to
14 any other person was made, amended, or revoked, it shall
15 promptly advise the other person of all relevant information.

16 (g) Subject to subsection (i) of Section 5-12 of this Act,
17 the rights of the person to which a part passes under Section
18 5-12 of this Act are superior to the rights of all others with
19 respect to the part. The person may accept or reject an
20 anatomical gift in whole or in part. Subject to the terms of
21 the document of gift and this Act, a person who accepts an
22 anatomical gift of an entire body may allow embalming, burial
23 or cremation, and use of remains in a funeral service. If the
24 gift is of a part, the person to which the part passes under
25 Section 5-12 of this Act, upon the death of the donor and
26 before embalming, burial, or cremation, shall cause the part to

1 be removed without unnecessary mutilation.

2 (h) Neither the physician who attends the decedent at death
3 nor the physician who determines the time of the decedent's
4 death may participate in the procedures for removing or
5 transplanting a part from the decedent.

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

9 (755 ILCS 50/5-50) (was 755 ILCS 50/8.1)

10 Sec. 5-50. Payment for anatomical gift.

11 (a) Except as provided in subsection (b), any person who
12 knowingly pays or offers to pay any financial consideration to
13 a donor or to any of the persons listed in subsection (b) of
14 Section 5-5 for making or consenting to an anatomical gift
15 shall be guilty of a Class A misdemeanor for the first
16 conviction and a Class 4 felony for subsequent convictions.

17 (b) This Section does not prohibit reimbursement for
18 reasonable costs associated with the removal, processing,
19 preservation, quality control, storage, transportation,
20 implantation, or disposal ~~removal, storage or transportation~~
21 of a human body or part thereof pursuant to an anatomical gift
22 executed pursuant to this Act.

23 (Source: P.A. 93-794, eff. 7-22-04.)

24 (755 ILCS 50/5-55 new)

1 Sec. 5-55. Law governing validity; choice of law as to the
2 execution of document of anatomical gift; presumption of
3 validity.

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

6 (1) this Act;

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

9 (3) the laws of the state or country where the person
10 making the anatomical gift was domiciled, had a place of
11 residence, or was a national at the time the document of
12 gift was executed.

13 (b) If a document of gift is valid under this Section, the
14 law of this State governs the interpretation of the document of
15 gift.

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

19 (755 ILCS 50/5-10 rep.)

20 (755 ILCS 50/5-30 rep.)

21 (755 ILCS 50/5-40 rep.)

22 Section 10. The Illinois Anatomical Gift Act is amended by
23 repealing Sections 5-10, 5-30, and 5-40.