

AN ACT concerning civil law.

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

Section 5. The Illinois Anatomical Gift Act is amended by changing Sections 1-5, 1-10, 5-5, 5-15, 5-20, 5-25, 5-27, 5-35, 5-45, and 5-50 and by adding Sections 5-7, 5-12, 5-42, 5-43, 5-47, and 5-55 as follows:

(755 ILCS 50/1-5)

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

Commissioners on Uniform State Laws.

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

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

Sec. 1-10. Definitions.

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

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

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

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

"Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to whom an anatomical gift could pass under Section 5-12.

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

"Donee" means the individual designated by the donor as the intended recipient or an entity which receives the anatomical gift, including, but not limited to, a hospital; an accredited medical school, dental school, college, or university; an organ procurement organization; an eye bank; a tissue bank; for research or education, a non-transplant anatomic bank; or other appropriate person.

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

~~"Federally designated organ procurement agency" means the organ procurement agency designated by the Secretary of the U.S. Department of Health and Human Services for the service area in which a hospital is located, or the organ procurement agency for which the U.S. Secretary of Health and Human~~

~~Services has granted the hospital a waiver pursuant to 42 U.S.C. 1320b-8(a).~~

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

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

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

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

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

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

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

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

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

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

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

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

"Procurement organization" means an organ procurement

organization or a tissue bank.

"Reasonably available for the giving of consent or refusal" means being able to be contacted by a procurement organization without undue effort and being 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 donor's part has been or is intended to be transplanted.

"State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

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

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

"Tissue bank" means any facility or program operating in Illinois that is accredited ~~certified~~ by the American Association of Tissue Banks, the Eye Bank Association of America, or the Association of Organ Procurement Organizations and is involved in procuring, furnishing, donating, or distributing corneas, bones, or other human tissue for the purpose of injecting, transfusing, or transplanting any of them into the human body or for the purpose of research or education. "Tissue bank" does not include a licensed blood

bank. For the purposes of this Act, "tissue" does not include organs or blood or blood products.

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

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

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

(a) An anatomical gift of a donor's body or part that is to be carried out upon the donor's death 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 or if the donor is an emancipated minor;

(2) an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

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

(4) the donor's guardian.

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

~~deemed to be a gift by that individual and takes effect without the need to obtain the consent of any other person.~~

(b) If no gift has been executed under subsection (a), an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made at the time of the decedent's death, or when death is imminent, by a member of the following classes of persons who is reasonably available for the giving of authorization or refusal, in the order of priority listed ~~any of the following persons, in the order of priority stated in items (1) through (11) below, when persons in prior classes are not available for the giving of authorization~~ consent or refusal and in the absence of ~~(i)~~ actual notice of contrary intentions by the decedent ~~and (ii)~~ ~~actual notice of opposition by any member within the same priority class, may consent to give all or any part of the decedent's body after or immediately before death to a person who may become a donee for any purpose specified in Section 5-10:~~

(1) an individual acting as the decedent's agent under a power of attorney for health care; 7

(2) the guardian of the person of the decedent;

(3) the spouse or civil union partner of the decedent;

(4) an adult child of the decedent;

(5) a parent of the decedent;

(6) an adult sibling of the decedent;

(7) an adult grandchild of the decedent;

- (8) a grandparent of the decedent;
- (9) a close friend of the decedent;
- (10) the guardian of the estate of the decedent; and
- ~~(2) the decedent's surrogate decision maker identified by the attending physician in accordance with the Health Care Surrogate Act,~~
- ~~(3) the guardian of the decedent's person at the time of death,~~
- ~~(4) the decedent's spouse,~~
- ~~(5) any of the decedent's adult sons or daughters,~~
- ~~(6) either of the decedent's parents,~~
- ~~(7) any of the decedent's adult brothers or sisters,~~
- ~~(8) any adult grandchild of the decedent,~~
- ~~(9) a close friend of the decedent,~~
- ~~(10) the guardian of the decedent's estate,~~
- (11) any other person authorized or under legal obligation to dispose of the body.

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

(b-5) If there is more than one member of a class listed in item (2), (4), (5), (6), or (7) of subsection (b) of this Section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 5-12 knows of

an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available for the giving of authorization or refusal.

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

(c) A gift of all or part of a body authorizes any blood or tissue test or minimally invasive examination necessary to assure medical acceptability of the gift for the purposes intended. The hospital shall, to the extent possible and in accordance with any agreement with the organ procurement organization or tissue bank, take measures necessary to maintain the medical suitability of the part until the procurement organization has had the opportunity to advise the applicable persons as set forth in this Act of the option to make an anatomical gift or has ascertained that the individual expressed a contrary intent and has so informed the hospital. The results of tests and examinations under this subsection shall be used or disclosed only for purposes of evaluating medical suitability for donation, to facilitate the donation process, and as required or permitted by existing law.

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

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

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

(755 ILCS 50/5-7 new)

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

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

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

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under subsection (a) or (b) of Section 5-20, or an amendment to an anatomical gift of the donor's body or part under Section 5-42, another person may not make, amend, or revoke the gift of the donor's

body or part under subsection (e) or (e-5) of Section 5-20.

(d) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift, a revocation of an anatomical gift of a donor's body or part under Section 5-42 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under subsection (a), (b), (e), or (e-5) of Section 5-20.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under subsection (a) of Section 5-5, 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.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under subsection (a) of Section 5-5, an anatomical gift of a part for one or more of the purposes set forth in subsection (a) of Section 5-5 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 subsection (a), (b), (b-5), (b-10), (e), or (e-5) of Section 5-20.

(755 ILCS 50/5-12 new)

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

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

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

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

(3) an eye bank or tissue bank; or

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

(b) If an anatomical gift to an individual under item (2) of subsection (a) of this Section cannot be transplanted into the individual, the part passes in accordance with subsection (g) of this Section unless there is an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) of this Section, but identifies the purpose for which an anatomical gift may be used, 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) For the purpose of subsection (c) of this Section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, and if the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) of this Section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy or research, and the gift 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 words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy or research, and the gift passes in accordance with

subsection (g) of this Section.

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

(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 an anatomical gift under item (2) of subsection (a) of this Section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass under this Section or the decedent's 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 the person knows that the gift was not effectively made under Section 5-5 or subsection (e) or (e-5) of Section 5-20 or if the person knows that the decedent made a refusal under Section 5-43 that was not revoked.

(k) Except as otherwise provided in item (2) of subsection (a) of this Section, nothing in this Act affects the allocation

of organs for transplantation or therapy.

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

Sec. 5-15. Disability of recipient.

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

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

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

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

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

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

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

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

(a) A donor may make an anatomical gift:

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

(2) in a will;

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

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

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

(b) A donor or other person authorized to make an anatomical gift under subsection (a) of Section 5-5 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other

person and must:

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

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

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

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

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

(b-5) 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.

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

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

(d) The donee or other person authorized to accept the gift pursuant to Section 5-12 may employ or authorize any qualified technician, surgeon, or physician to perform the recovery. ~~Notwithstanding Section 5-45 (b), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the~~

~~absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.~~

(e) A person authorized to make an anatomical gift under subsection (b) of Section 5-5 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication. ~~Any gift by a person designated in Section 5-5 (b) shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message.~~

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

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

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

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

(f) When there is a suitable candidate for organ donation and a donation or consent to donate has not yet been given, procedures to preserve the decedent's body for possible organ and tissue donation may be implemented under the authorization of the applicable organ procurement organization ~~agency~~, at its own expense, prior to making a donation request pursuant to Section 5-25. If the organ procurement organization ~~agency~~ does not locate a person authorized to consent to donation or consent to donation is denied, then procedures to preserve the decedent's body shall be ceased and no donation shall be made. The organ procurement organization ~~agency~~ shall respect the religious tenets of the decedent, if known, such as a pause after death, before initiating preservation services. Nothing in this Section shall be construed to authorize interference with the coroner in carrying out an investigation or autopsy.

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

(755 ILCS 50/5-25)

Sec. 5-25. Notification; authorization ~~consent~~.

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

(b) Hospitals shall proceed in accordance with the applicable requirements of 42 CFR 482.45 or any successor provisions of federal statute or regulation, as may be amended from time to time, with regard to collaboration with procurement organizations to facilitate organ, tissue, and eye donation ~~and the written agreement between the hospital and the applicable organ procurement agency executed thereunder.~~

~~(b)~~ In making a request for organ or tissue donation, the hospital or the hospital's federally designated organ procurement organization ~~agency~~ or tissue bank shall request any of the ~~following~~ persons, in the order of priority stated in items (1) through (11) below, when persons in prior classes are not available and in the absence of (i) actual notice of contrary intentions by the decedent, (ii) actual notice of opposition by any member within the same priority class, and (iii) reason to believe that an anatomical gift is contrary to the decedent's religious beliefs, to authorize ~~consent to~~ the gift of all or any part of the decedent's body for any purpose

specified in Section 5-12 ~~5-10 of this Act:~~

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

(2) the guardian of the person of the decedent;

(3) the spouse or civil union partner of the decedent;

(4) an adult child of the decedent;

(5) a parent of the decedent;

(6) an adult sibling of the decedent;

(7) an adult grandchild of the decedent;

(8) a grandparent of the decedent;

(9) a close friend of the decedent;

(10) the guardian of the estate of the decedent; and

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

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

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

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

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

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

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

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

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

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

(c) (Blank). ~~If (1) the hospital, the applicable organ procurement agency, or the tissue bank has actual notice of opposition to the gift by the decedent or any person in the highest priority class in which an available person can be found, or (2) there is reason to believe that an anatomical gift is contrary to the decedent's religious beliefs, or (3) the Director of Public Health has adopted a rule signifying his or her determination that the need for organs and tissues for donation has been adequately met, then the gift of all or any part of the decedent's body shall not be requested. If a donation is requested, consent or refusal may be obtained only from the person or persons in the highest priority class available. If the hospital administrator, or his or her designated representative, the designated organ procurement agency, or the tissue bank is unable to obtain consent from any of the persons named in items (1) through (11) of subsection (b) of this Section, the decedent's body shall not be used for an anatomical gift unless a valid anatomical gift document was executed under this Act.~~

(d) (Blank). ~~When there is a suitable candidate for organ donation, as described in subsection (a), or if consent to remove organs and tissues is granted, the hospital shall notify the applicable federally designated organ procurement agency. The federally designated organ procurement agency shall notify any tissue bank specified by the hospital of the suitable candidate for tissue donation. The organ procurement agency~~

~~shall collaborate with all tissue banks in Illinois to maximize tissue procurement in a timely manner.~~

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

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

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

(a) In this Section, "donation after circulatory ~~cardiac~~ death" means the donation of organs from a ~~ventilated~~ patient whose death is declared based upon cardiopulmonary, and not neurological, criteria, following the implementation of the decision to withdraw life support without a certification of brain death and with a do not resuscitate order, if a decision has been reached by the physician and the family to withdraw life support and if the donation does not occur until after the declaration of cardiac death.

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

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

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

(2) That all organ donation options have been explained to the patient or the individual given authority to consent to organ donation, including the option of donation after circulatory ~~cardiac~~ death.

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

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

(5) That the patient or the individual given authority to consent to organ donation has been informed of another hospital that will allow donation after circulatory ~~cardiac~~ death and will accept a patient transfer for the purpose of donation after circulatory ~~cardiac~~ death; and

that the cost of transferring the patient to that other hospital will be covered by the organ procurement organization ~~agency~~, with no additional cost to the patient or the individual given authority to consent to organ donation.

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

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

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

Sec. 5-35. Delivery of document of anatomical gift not required; right to examine ~~Document of Gift~~.

(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 to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 5-12.

~~If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may~~

~~be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.~~

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

(755 ILCS 50/5-42 new)

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

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

(1) a record signed by:

(A) the donor;

(B) the other authorized person; or

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

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

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

(c) Subject to Section 5-7, a donor or other person authorized to make an anatomical gift under subsection (a) of Section 5-5 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

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

(e) 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.

(755 ILCS 50/5-43 new)

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

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

(1) a record signed by:

(A) the individual; or

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

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

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

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

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

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

(c) 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 under subsection (a), (b), (b-5), or (b-10) of Section 5-20 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.

(d) In the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

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

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

(a) The donee may accept or reject the anatomical gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services, unless a person named in subsection (b) of Section 5-5 has requested, prior to the final disposition by the donee, that the remains of said body be returned to his or her custody for the purpose of final disposition. Such request shall be honored by the donee if the terms of the gift are silent on how final disposition is to take place. If the gift is of a part of the body, the donee or technician designated by him upon the death of the donor and prior to embalming, shall cause the part to be removed without

unnecessary mutilation and without undue delay in the release of the body for the purposes of final disposition. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body, in the order of ~~or~~ priority listed in subsection (b) of Section 5-5 ~~of this Act~~.

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

(c) A person who acts or attempts in good faith to act in accordance with this Act, the Illinois Vehicle Code, the AIDS Confidentiality Act, or the applicable anatomical gift law of another state is not liable for the act in a civil action, criminal prosecution, or administrative proceeding. 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. In determining whether an anatomical gift has been made, amended, or revoked under this Act, a person may rely upon representations of an individual listed in item (2), (3), (4), (5), (6), (7), or (8) of subsection (b) of Section 5-5 relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue. ~~A person who acts in good faith in accord with the terms of this Act, the Illinois Vehicle Code, and the AIDS Confidentiality Act, or the anatomical gift laws~~

~~of another state or a foreign country, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.~~ Any person that participates in good faith and according to the usual and customary standards of medical practice in the preservation, removal, or transplantation of any part of a decedent's body pursuant to an anatomical gift made by the decedent under Section 5-20 ~~of this Act~~ or pursuant to an anatomical gift made by an individual as authorized by subsection (b) of Section 5-5 ~~of this Act~~ shall have immunity from liability, civil, criminal, or otherwise, that might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the validity of an anatomical gift executed pursuant to Section 5-20 ~~of this Act~~ shall be presumed and the good faith of any person participating in the removal or transplantation of any part of a decedent's body pursuant to an anatomical gift made by the decedent or by another individual authorized by the Act shall be presumed.

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

(e) If the donee is provided information, or determines through independent examination, that there is evidence that

the anatomical gift was exposed to the human immunodeficiency virus (HIV) or any other identified causative agent of acquired immunodeficiency syndrome (AIDS), the donee may reject the gift and shall treat the information and examination results as a confidential medical record; the donee may disclose only the results confirming HIV exposure, and only to the physician of the deceased donor. The donor's physician shall determine whether the person who executed the gift should be notified of the confirmed positive test result.

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

(755 ILCS 50/5-47 new)

Sec. 5-47. Rights and duties of procurement organizations 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 Secretary of State and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

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

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

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

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

(e) Upon referral by a hospital under subsection (a) of this Section, a procurement organization shall make a reasonable search for any person listed in subsection (b) of Section 5-5 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.

(f) Subject to subsection (i) of Section 5-12, the rights of the person to which a part passes under Section 5-12 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this Act, a person who 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 which the part passes under Section 5-12, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

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

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

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

Sec. 5-50. Payment for anatomical gift.

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

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

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

(755 ILCS 50/5-55 new)

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

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

(1) this Act;

(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, had 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.

(755 ILCS 50/5-10 rep.)

(755 ILCS 50/5-30 rep.)

(755 ILCS 50/5-40 rep.)

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

Section 99. Effective date. This Act takes effect January 1, 2014.