

SUBCOMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1708
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Rex Duncan

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 PROPOSED SUBCOMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 1708

By: Coffee and Gumm of the
Senate

6 and

7 Duncan of the House

8
9 PROPOSED SUBCOMMITTEE SUBSTITUTE

10 (Public health - Oklahoma Uniform Anatomical Gift

11 Act - Commissioner of Health - codification -

12 noncodification - repealer -

13 effective date)

14
15
16
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2200.1 of Title 63, unless there
20 is created a duplication in numbering, reads as follows:

21 This act shall be known and may be cited as the "Oklahoma
22 Uniform Anatomical Gift Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2200.2 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in the Oklahoma Uniform Anatomical Gift Act:

5 1. "Adult" means an individual who is at least eighteen (18)
6 years of age;

7 2. "Agent" means an individual:

8 a. authorized to make health care decisions on the
9 principal's behalf by a power of attorney for health
10 care, or

11 b. expressly authorized to make an anatomical gift on the
12 principal's behalf by any other record signed by the
13 principal;

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

17 4. "Decedent" means a deceased individual whose body or part is
18 or may be the source of an anatomical gift and includes a stillborn
19 infant and, subject to restrictions imposed by any other provisions
20 of law, a fetus;

21 5. "Disinterested witness" means a witness other than the
22 spouse, child, parent, sibling, grandchild, grandparent, or guardian
23 of the individual who makes, amends, revokes, or refuses to make an
24 anatomical gift, or another adult who exhibited special care and

1 concern for the individual and does not include a person to whom an
2 anatomical gift could pass under Section 11 of this act;

3 6. "Document of gift" means a donor card or other record used
4 to make an anatomical gift, including a statement or symbol on a
5 driver license, identification card, or donor registry;

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

8 8. "Donor registry" means a database that contains records of
9 anatomical gifts and amendments to or revocations of anatomical
10 gifts;

11 9. "Driver license" means a license or permit issued by the
12 Department of Public Safety to operate a vehicle, whether or not
13 conditions are attached to the license or permit;

14 10. "Eye bank" means a person that is licensed, accredited, or
15 regulated under federal or state law to engage in the recovery,
16 screening, testing, processing, storage, or distribution of human
17 eyes or portions of human eyes;

18 11. "Guardian" means a person appointed by a court to make
19 decisions regarding the support, care, education, health, or welfare
20 of an individual and does not include a guardian ad litem;

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

24

1 13. "Identification card" means an identification card issued
2 by the Department of Public Safety;

3 14. "Know" means to have actual knowledge;

4 15. "Minor" means an individual who is under eighteen (18)
5 years of age;

6 16. "Organ procurement organization" means a person designated
7 by the Secretary of the United States Department of Health and Human
8 Services as an organ procurement organization;

9 17. "Parent" means a parent whose parental rights have not been
10 terminated;

11 18. "Part" means an organ, an eye, or tissue of a human being
12 and does not include the whole body;

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

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

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

22 22. "Prospective donor" means an individual who is dead or near
23 death and who has been determined by a procurement organization to
24 have a part that could be medically suitable for transplantation,

1 therapy, research, or education and does not include an individual
2 who has made a refusal;

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

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

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

12 26. "Refusal" means a record created under Section 7 of this
13 act that expressly states an intent to bar other persons from making
14 an anatomical gift of an individual's body or part;

15 27. "Sign" means, with the present intent to authenticate or
16 adopt a record, to:

- 17 a. execute or adopt a tangible symbol, or
18 b. attach to or logically associate with the record an
19 electronic symbol, sound, or process;

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

24

1 29. "Technician" means an individual determined to be qualified
2 to remove or process parts by an appropriate organization that is
3 licensed, accredited, or regulated under federal or state law,
4 including an enucleator;

5 30. "Tissue" means a portion of the human body other than an
6 organ or an eye and does not include blood unless the blood is
7 donated for the purpose of research or education;

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

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

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2200.3 of Title 63, unless there
17 is created a duplication in numbering, reads as follows:

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

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2220.4 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

23 Subject to Section 8 of this act, an anatomical gift of a
24 donor's body or part may be made during the life of the donor for

1 the purpose of transplantation, therapy, research, or education in
2 the manner provided in Section 5 of this act by:

3 1. The donor, if the donor is an adult or if the donor is a
4 minor and is:

5 a. emancipated, or

6 b. authorized under state law to apply for a driver
7 license because the donor is at least sixteen (16)
8 years of age;

9 2. An agent of the donor, unless the power of attorney for
10 health care or other record prohibits the agent from making an
11 anatomical gift;

12 3. A parent of the donor, if the donor is an unemancipated
13 minor; or

14 4. The donor's guardian.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2200.5 of Title 63, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A donor may make an anatomical gift:

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

22 2. In a will;

23

24

1 3. During a terminal illness or injury of the donor, by any
2 form of communication addressed to at least two adults, at least one
3 of whom is a disinterested witness; or

4 4. As provided in subsection B of this section.

5 B. A donor or other person authorized to make an anatomical
6 gift under Section 4 of this act may make a gift by a donor card or
7 other record signed by the donor or other person making the gift or
8 by authorizing that a statement or symbol indicating that the donor
9 has made an anatomical gift be included on a donor registry. If the
10 donor or other person is physically unable to sign a record, the
11 record may be signed by another individual at the direction of the
12 donor or other person and must:

13 1. Be witnessed by at least two adults, at least one of whom is
14 a disinterested witness, who have signed at the request of the donor
15 or the other person; and

16 2. State that it has been signed and witnessed as provided in
17 paragraph 1 of this subsection.

18 C. Revocation, suspension, expiration, or cancellation of a
19 driver license or identification card upon which an anatomical gift
20 is indicated does not invalidate the gift.

21 D. An anatomical gift made by will takes effect upon the
22 donor's death whether or not the will is probated. Invalidation of
23 the will after the donor's death does not invalidate the gift.

24

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2200.6 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Subject to Section 8 of this act, a donor or other person
5 authorized to make an anatomical gift under Section 4 of this act
6 may amend or revoke an anatomical gift by:

7 1. A record signed by:

8 a. the donor,

9 b. the other person, or

10 c. subject to subsection B, another individual acting at
11 the direction of the donor or the other person if the
12 donor or other person is physically unable to sign; or

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

16 B. A record signed pursuant to subparagraph c of paragraph 1 of
17 subsection A of this section must:

18 1. Be witnessed by at least two adults, at least one of whom is
19 a disinterested witness, who have signed at the request of the donor
20 or the other person; and

21 2. State that it has been signed and witnessed as provided in
22 paragraph 1 of this subsection.

23 C. Subject to Section 8 of this act, a donor or other person
24 authorized to make an anatomical gift under Section 4 of this act

1 may revoke an anatomical gift by the destruction or cancellation of
2 the document of gift, or the portion of the document of gift used to
3 make the gift, with the intent to revoke the gift.

4 D. A donor may amend or revoke an anatomical gift that was not
5 made in a will by any form of communication during a terminal
6 illness or injury addressed to at least two adults, at least one of
7 whom is a disinterested witness.

8 E. A donor who makes an anatomical gift in a will may amend or
9 revoke the gift in the manner provided for amendment or revocation
10 of wills or as provided in subsection A of this section.

11 SECTION 7. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2200.7 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 A. An individual may refuse to make an anatomical gift of the
15 individual's body or part by:

16 1. A record signed by:

17 a. the individual, or

18 b. subject to subsection B of this section, another
19 individual acting at the direction of the individual
20 if the individual is physically unable to sign;

21 2. The individual's will, whether or not the will is admitted
22 to probate or invalidated after the individual's death; or

23

24

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

4 B. A record signed pursuant to subparagraph b of paragraph 1 of
5 subsection A of this section must:

6 1. Be witnessed by at least two adults, at least one of whom is
7 a disinterested witness, who have signed at the request of the
8 individual; and

9 2. State that it has been signed and witnessed as provided in
10 paragraph 1 of this subsection.

11 C. An individual who has made a refusal may amend or revoke the
12 refusal:

13 1. In the manner provided in subsection A of this section for
14 making a refusal;

15 2. By subsequently making an anatomical gift pursuant to
16 Section 5 of this act that is inconsistent with the refusal; or

17 3. By destroying or canceling the record evidencing the
18 refusal, or the portion of the record used to make the refusal, with
19 the intent to revoke the refusal.

20 D. Except as otherwise provided in subsection H of Section 8 of
21 this act, in the absence of an express, contrary indication by the
22 individual set forth in the refusal, an individual's unrevoked
23 refusal to make an anatomical gift of the individual's body or part
24

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

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2200.8 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Except as otherwise provided in subsection G of this section
7 and subject to subsection F of this section, in the absence of an
8 express, contrary indication by the donor, a person other than the
9 donor is barred from making, amending, or revoking an anatomical
10 gift of a donor's body or part if the donor made an anatomical gift
11 of the donor's body or part under Section 5 of this act or an
12 amendment to an anatomical gift of the donor's body or part under
13 Section 6 of this act.

14 B. A donor's revocation of an anatomical gift of the donor's
15 body or part under Section 6 of this act is not a refusal and does
16 not bar another person specified in Section 4 or 9 of this act from
17 making an anatomical gift of the donor's body or part under Section
18 5 or 10 of this act.

19 C. If a person other than the donor makes an unrevoked
20 anatomical gift of the donor's body or part under Section 5 of this
21 act or an amendment to an anatomical gift of the donor's body or
22 part under Section 6 of this act, another person may not make,
23 amend, or revoke the gift of the donor's body or part under Section
24 10 of this act.

1 D. A revocation of an anatomical gift of a donor's body or part
2 under Section 6 of this act by a person other than the donor does
3 not bar another person from making an anatomical gift of the body or
4 part under Section 5 or 10 of this act.

5 E. In the absence of an express, contrary indication by the
6 donor or other person authorized to make an anatomical gift under
7 Section 4 of this act, an anatomical gift of a part is neither a
8 refusal to give another part nor a limitation on the making of an
9 anatomical gift of another part at a later time by the donor or
10 another person.

11 F. In the absence of an express, contrary indication by the
12 donor or other person authorized to make an anatomical gift under
13 Section 4 of this act, an anatomical gift of a part for one or more
14 of the purposes set forth in Section 4 of this act is not a
15 limitation on the making of an anatomical gift of the part for any
16 of the other purposes by the donor or any other person under Section
17 5 or 10 of this act.

18 G. If a donor who is an unemancipated minor dies, a parent of
19 the donor who is reasonably available may revoke or amend an
20 anatomical gift of the donor's body or part.

21 H. If an unemancipated minor who signed a refusal dies, a
22 parent of the minor who is reasonably available may revoke the
23 minor's refusal.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2200.9 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Subject to subsections B and C of this section and unless
5 barred by Section 7 or 8 of this act, an anatomical gift of a
6 decedent's body or part for purpose of transplantation, therapy,
7 research, or education may be made by any member of the following
8 classes of persons who is reasonably available, in the order of
9 priority listed:

10 1. An agent of the decedent at the time of death who could have
11 made an anatomical gift under paragraph 2 of Section 4 of this act
12 immediately before the decedent's death;

13 2. The spouse of the decedent;

14 3. Adult children of the decedent;

15 4. Parents of the decedent;

16 5. Adult siblings of the decedent;

17 6. Adult grandchildren of the decedent;

18 7. Grandparents of the decedent;

19 8. An adult who exhibited special care and concern for the
20 decedent;

21 9. The persons who were acting as the guardians of the person
22 of the decedent at the time of death; and

23 10. Any other person having the authority to dispose of the
24 decedent's body.

1 B. If there is more than one member of a class listed in
2 paragraph 1, 3, 4, 5, 6, 7 or 9 of subsection A of this section
3 entitled to make an anatomical gift, an anatomical gift may be made
4 by a member of the class unless that member or a person to whom the
5 gift may pass under Section 11 of this act knows of an objection by
6 another member of the class. If an objection is known, the gift may
7 be made only by a majority of the members of the class who are
8 reasonably available.

9 C. A person may not make an anatomical gift if, at the time of
10 the decedent's death, a person in a prior class under subsection A
11 of this section is reasonably available to make or to object to the
12 making of an anatomical gift.

13 SECTION 10. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 2200.10 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. A person authorized to make an anatomical gift under Section
17 9 of this act may make an anatomical gift by a document of gift
18 signed by the person making the gift or by that person's oral
19 communication that is electronically recorded or is
20 contemporaneously reduced to a record and signed by the individual
21 receiving the oral communication.

22 B. Subject to subsection C of this section, an anatomical gift
23 by a person authorized under Section 9 of this act may be amended or
24 revoked orally or in a record by any member of a prior class who is

1 reasonably available. If more than one member of the prior class is
2 reasonably available, the gift made by a person authorized under
3 Section 9 of this act may be:

4 1. Amended only if a majority of the reasonably available
5 members agree to amending the gift; or

6 2. Revoked only if a majority of the members agree to the
7 revoking of the gift or if they are equally divided as to whether to
8 revoke the gift.

9 C. A revocation under subsection B of this section is effective
10 only if, before an incision has been made to remove a part from the
11 donor's body or before invasive procedures have begun to prepare the
12 recipient, the procurement organization, transplant hospital, or
13 physician or technician knows of the revocation.

14 SECTION 11. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 2200.11 of Title 63, unless
16 there is created a duplication in numbering, reads as follows:

17 A. An anatomical gift may be made to the following persons
18 named in the document of gift:

19 1. A hospital; accredited medical school, dental school,
20 college, or university; organ procurement organization; or other
21 appropriate person, for research or education;

22 2. Subject to subsection B of this section, an individual
23 designated by the person making the anatomical gift if the
24 individual is the recipient of the part; or

1 3. An eye bank or tissue bank.

2 B. If an anatomical gift to an individual under paragraph 2 of
3 subsection A of this section cannot be transplanted into the
4 individual, the part passes in accordance with subsection G of this
5 section in the absence of an express, contrary indication by the
6 person making the anatomical gift.

7 C. If an anatomical gift of one or more specific parts or of
8 all parts is made in a document of gift that does not name a person
9 described in subsection A of this section but identifies the purpose
10 for which an anatomical gift may be used, the following rules apply:

11 1. If the part is an eye and the gift is for the purpose of
12 transplantation or therapy, the gift passes to the appropriate eye
13 bank;

14 2. If the part is tissue and the gift is for the purpose of
15 transplantation or therapy, the gift passes to the appropriate
16 tissue bank;

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

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

23 D. For the purpose of subsection C of this section, if there is
24 more than one purpose of an anatomical gift set forth in the

1 document of gift but the purposes are not set forth in any priority,
2 the gift must be used for transplantation or therapy, if suitable.
3 If the gift cannot be used for transplantation or therapy, the gift
4 may be used for research or education.

5 E. If an anatomical gift of one or more specific parts is made
6 in a document of gift that does not name a person described in
7 subsection A of this section and does not identify the purpose of
8 the gift, the gift may be used only for transplantation or therapy,
9 and the gift passes in accordance with subsection G of this section.

10 F. If a document of gift specifies only a general intent to
11 make an anatomical gift by words such as "donor", "organ donor", or
12 "body donor", or by a symbol or statement of similar import, the
13 gift may be used for transplantation, research, or therapy, and the
14 gift passes in accordance with subsection G of this section.

15 G. For purposes of subsections B, E and F of this section, the
16 following rules apply:

17 1. If the part is an eye, the gift passes to the appropriate
18 eye bank;

19 2. If the part is tissue, the gift passes to the appropriate
20 tissue bank; and

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

23 H. An anatomical gift of an organ for transplantation or
24 therapy, other than an anatomical gift under paragraph 2 of

1 subsection A of this section, passes to the organ procurement
2 organization as custodian of the organ.

3 I. If an anatomical gift does not pass pursuant to subsections
4 A through H of this section or the decedent's body or part is not
5 used for transplantation, therapy, research, or education, custody
6 of the body or part passes to the person under obligation to dispose
7 of the body or part.

8 J. A person may not accept an anatomical gift if the person
9 knows that the gift was not effectively made under Section 5 or 10
10 of this act or if the person knows that the decedent made a refusal
11 under Section 7 of this act that was not revoked. For purposes of
12 this subsection, if a person knows that an anatomical gift was made
13 on a document of gift, the person is deemed to know of any amendment
14 or revocation of the gift or any refusal to make an anatomical gift
15 on the same document of gift.

16 K. Except as otherwise provided in paragraph 2 of subsection A
17 of this section, nothing in this act affects the allocation of
18 organs for transplantation or therapy.

19 SECTION 12. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 2200.12 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 A. The following persons shall make a reasonable search of an
23 individual who the person reasonably believes is dead or near death
24

1 for a document of gift or other information identifying the
2 individual as a donor or as an individual who made a refusal:

3 1. A law enforcement officer, firefighter, paramedic, or other
4 emergency rescuer finding the individual; and

5 2. If no other source of the information is immediately
6 available, a hospital, as soon as practical after the individual's
7 arrival at the hospital.

8 B. If a document of gift or a refusal to make an anatomical
9 gift is located by the search required by paragraph 1 of subsection
10 A of this section and the individual or deceased individual to whom
11 it relates is taken to a hospital, the person responsible for
12 conducting the search shall send the document of gift or refusal to
13 the hospital.

14 C. A person is not subject to criminal or civil liability for
15 failing to discharge the duties imposed by this section but may be
16 subject to administrative sanctions.

17 SECTION 13. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2200.13 of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 A. A document of gift need not be delivered during the donor's
21 lifetime to be effective.

22 B. Upon or after an individual's death, a person in possession
23 of a document of gift or a refusal to make an anatomical gift with
24 respect to the individual shall allow examination and copying of the

1 document of gift or refusal by a person authorized to make or object
2 to the making of an anatomical gift with respect to the individual
3 or by a person to which the gift could pass under Section 11 of this
4 act.

5 SECTION 14. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2200.14 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 A. When a hospital refers an individual at or near death to a
9 procurement organization, the organization shall make a reasonable
10 search of the records of the Department of Public Safety and any
11 donor registry that it knows exists for the geographical area in
12 which the individual resides to ascertain whether the individual has
13 made an anatomical gift.

14 B. A procurement organization must be allowed reasonable access
15 to information in the records of the Department of Public Safety to
16 ascertain whether an individual at or near death is a donor.

17 C. When a hospital refers an individual at or near death to a
18 procurement organization, the organization may conduct any
19 reasonable examination necessary to ensure the medical suitability
20 of a part that is or could be the subject of an anatomical gift for
21 transplantation, therapy, research, or education from a donor or a
22 prospective donor. During the examination period, measures
23 necessary to ensure the medical suitability of the part may not be
24

1 withdrawn unless the hospital or procurement organization knows that
2 the individual expressed a contrary intent.

3 D. Unless prohibited by any other provisions of law, at any
4 time after a donor's death, the person to whom a part passes under
5 Section 11 of this act may conduct any reasonable examination
6 necessary to ensure the medical suitability of the body or part for
7 its intended purpose.

8 E. Unless prohibited by any other provisions of law, an
9 examination under subsection C or D of this section may include an
10 examination of all medical and dental records of the donor or
11 prospective donor.

12 F. Upon the death of a minor who was a donor or had signed a
13 refusal, unless a procurement organization knows the minor is
14 emancipated, the procurement organization shall conduct a reasonable
15 search for the parents of the minor and provide the parents with an
16 opportunity to revoke or amend the anatomical gift or revoke the
17 refusal.

18 G. Upon referral by a hospital under subsection A of this
19 section, a procurement organization shall make a reasonable search
20 for any person listed in Section 9 of this act having priority to
21 make an anatomical gift on behalf of a prospective donor. If a
22 procurement organization receives information that an anatomical
23 gift to any other person was made, amended, or revoked, it shall
24 promptly advise the other person of all relevant information.

1 H. Subject to subsection I of Section 11 and Section 23 of this
2 act, the rights of the person to which a part passes under Section
3 11 of this act are superior to the rights of all others with respect
4 to the part. The person may accept or reject an anatomical gift in
5 whole or in part. Subject to the terms of the document of gift and
6 this act, a person that accepts an anatomical gift of an entire body
7 may allow embalming, burial or cremation, and use of remains in a
8 funeral service. If the gift is of a part, the person to which the
9 part passes under Section 11 of this act, upon the death of the
10 donor and before embalming, burial, or cremation, shall cause the
11 part to be removed without unnecessary mutilation.

12 I. Neither the physician who attends the decedent at death nor
13 the physician who determines the time of the decedent's death may
14 participate in the procedures for removing or transplanting a part
15 from the decedent.

16 J. A physician or technician may remove a donated part from the
17 body of a donor that the physician or technician is qualified to
18 remove.

19 SECTION 15. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 2200.15 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 Each hospital in this state shall enter into agreements or
23 affiliations with procurement organizations for coordination of
24 procurement and use of anatomical gifts.

1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2200.16 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Except as otherwise provided in subsection B of this
5 section, a person that, for valuable consideration, knowingly
6 purchases or sells a part for transplantation or therapy if removal
7 of a part from an individual is intended to occur after the
8 individual's death commits a felony and upon conviction is subject
9 to a fine of not more than Fifty Thousand Dollars (\$50,000.00) or
10 imprisonment for not more than five (5) years, or both such fine and
11 imprisonment.

12 B. A person may charge a reasonable amount for the removal,
13 processing, preservation, quality control, storage, transportation,
14 implantation, or disposal of a part.

15 SECTION 17. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2200.17 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 A person that, in order to obtain a financial gain,
19 intentionally falsifies, forges, conceals, defaces, or obliterates a
20 document of gift, an amendment or revocation of a document of gift,
21 or a refusal commits a felony and upon conviction is subject to a
22 fine of not more than Fifty Thousand Dollars (\$50,000.00) or
23 imprisonment for not more than five (5) years, or both such fine and
24 imprisonment.

1 SECTION 18. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2200.18 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. A person who acts in accordance with this act or with the
5 applicable anatomical gift law of another state or attempts in good
6 faith to do so, is not liable for the act in a civil action,
7 criminal prosecution, or administrative proceeding.

8 B. Neither the person making an anatomical gift nor the donor's
9 estate is liable for any injury or damage that results from the
10 making or use of the gift.

11 C. In determining whether an anatomical gift has been made,
12 amended, or revoked under this act, a person may rely upon
13 representations of an individual listed in paragraph 2, 3, 4, 5, 6,
14 7 or 8 of subsection A of Section 9 of this act relating to the
15 individual's relationship to the donor or prospective donor unless
16 the person knows that the representation is untrue.

17 SECTION 19. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2200.19 of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 A. A document of gift is valid if executed in accordance with:

- 21 1. This act;
22 2. The laws of the state or country where it was executed; or
23
24

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

4 B. If a document of gift is valid under this section, the law
5 of this state governs the interpretation of the document of gift.

6 C. A person may presume that a document of gift or amendment of
7 an anatomical gift is valid unless that person knows that it was not
8 validly executed or was revoked.

9 SECTION 20. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2200.20 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 A. 1. There is hereby established within the State Department
13 of Health, an organ, eye and tissue donor registry for the State of
14 Oklahoma to be known as the "Life Share Donor Registry". The
15 Department is authorized to contract with the designated organ
16 procurement organization who shall act on behalf of the Department
17 by carrying out the functions of the Department in the
18 administration of the Registry, in compliance with 18 U.S.C. Section
19 2721. The contract between the Department and the designated organ
20 procurement organization shall be subject to the concurrence and
21 approval of the Department of Public Safety.

22 2. The registry shall maintain and update as needed the
23 pertinent information on all Oklahomans who have indicated a
24 willingness to be an organ donor, eye donor or tissue donor by a

1 designation on a driver license, a state identification card, a
2 donor card, an online or other organ donor registry enrollment form,
3 or any other document of gift.

4 3. The registry and all information therein shall be
5 confidential and shall be subject to access only by the designated
6 organ procurement organization and by eye banks and tissue banks
7 licensed by the State of Oklahoma seven (7) days a week, twenty-four
8 (24) hours per day; however, the personal information and highly
9 restricted personal information shall only be available to the
10 designated organ, tissue, and eye procurement organizations solely
11 for the purpose of identifying a potential donor and only when
12 acting on behalf of the State Department of Health as prescribed in
13 paragraph 1 of this subsection. The placement of any personal
14 information and highly restricted personal information on the
15 Registry that, at the time of placement, was confidential under the
16 Open Records Act or the Driver's Privacy Protection Act (DPPA), 18
17 U.S.C. Sections 2721 through 2725, shall remain confidential.

18 4. The purpose of the registry shall include, but not be
19 limited to:

- 20 a. providing a means of recovering an anatomical gift for
21 transplantation or research, and
- 22 b. collecting data to develop and evaluate the
23 effectiveness of educational initiatives promoting
24 organ, eye and tissue donation.

1 B. Procedures to administer the Life Share Donor Registry shall
2 specify:

3 1. The information placed in the registry may include personal
4 information and highly restricted personal information, as defined
5 in 18 U.S.C. Section 2721, and access to such information shall
6 conform to the Driver's Privacy Protection Act (DPPA), 18 U.S.C.
7 Sections 2721 through 2725;

8 2. Authorization for the designated organ procurement
9 organization or an eye or tissue bank, licensed by the State of
10 Oklahoma, to analyze registry data under research protocols directed
11 toward determination and identification of the means to promote and
12 increase organ, eye and tissue donation within this state;

13 3. A process for updating information in the registry including
14 a method whereby an individual may revoke his or her intent to be an
15 organ, eye, or tissue donor;

16 4. The method for making information on the registry available
17 to the designated organ procurement organizations and to tissue
18 banks and eye banks licensed by the State of Oklahoma;

19 5. Limitations on the use of and access to the registry;

20 6. A toll-free telephone number, available twenty-four (24)
21 hours a day, for use by the public to obtain information on becoming
22 an organ, tissue or eye donor;

23

24

1 7. A process for establishing, implementing, maintaining, and
2 administering an online organ, eye and tissue donor registration
3 process and ensuring the confidentiality of information provided;

4 8. A process for a donor who has registered online to sign a
5 confirmation card that will be returned to the designated organ
6 procurement organization and made part of the registry record; and

7 9. Procedures for collaborating with the Department of Public
8 Safety to transmit stored driver license data by the Department of
9 Public Safety, in conformance with 18 U.S.C. Section 2721, to the
10 Life Share Donor Registry maintained by the designated organ
11 procurement organization, and to ensure the confidentiality of such
12 information for present and potential donors. Monies credited to
13 the Oklahoma Organ Donor Education and Awareness Program Revolving
14 Fund created in Section 2220.3 of this title may be used for a one-
15 time transfer to the Department of Public Safety for the reasonable
16 costs associated with the initial installation and setup of
17 equipment and software for electronic transfer of donor information.
18 All actual electronic transfers of donor information shall be at no
19 charge to the designated organ procurement organization; however,
20 all costs associated with the creation and maintenance of the Life
21 Share Donor Registry shall be paid by the designated organ
22 procurement organization.

23 C. Information obtained by the designated organ procurement
24 organization shall be used for the purpose of:

1 1. Establishing a statewide organ, eye, and tissue donor
2 registry that is accessible to designated organ procurement
3 organizations and to eye banks and tissue banks, licensed by the
4 State of Oklahoma, for the recovery, preservation, transportation,
5 and placement of organs, eyes, and tissue; and

6 2. Designated organ procurement organizations in other states
7 when an Oklahoma resident is a donor of an anatomical gift and is
8 not located in Oklahoma at the time of death or immediately before
9 the death of the donor.

10 SECTION 21. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 2200.21 of Title 63, unless
12 there is created a duplication in numbering, reads as follows:

13 A. As used in this section:

14 1. "Advance health care directive" means a power of attorney
15 for health care or a record signed or authorized by a prospective
16 donor containing the prospective donor's direction concerning a
17 health care decision for the prospective donor;

18 2. "Declaration" means a record signed by a prospective donor
19 specifying the circumstances under which a life support system may
20 be withheld or withdrawn from the prospective donor; and

21 3. "Health care decision" means any decision regarding the
22 health care of the prospective donor.

23 B. If a prospective donor has a declaration or advance health
24 care directive and the terms of the declaration or directive and the

1 express or implied terms of a potential anatomical gift are in
2 conflict with regard to the administration of measures necessary to
3 ensure the medical suitability of a part for transplantation or
4 therapy, the prospective donor's attending physician and prospective
5 donor shall confer to resolve the conflict. If the prospective
6 donor is incapable of resolving the conflict, an agent acting under
7 the prospective donor's declaration or directive, or, if none or the
8 agent is not reasonably available, another person authorized by law
9 other than this act to make health-care decisions on behalf of the
10 prospective donor, shall act for the donor to resolve the conflict.
11 The conflict must be resolved as expeditiously as possible.
12 Information relevant to the resolution of the conflict may be
13 obtained from the appropriate procurement organization and any other
14 person authorized to make an anatomical gift for the prospective
15 donor under Section 9 of this act. Before resolution of the
16 conflict, measures necessary to ensure the medical suitability of
17 the part may not be withheld or withdrawn from the prospective donor
18 if withholding or withdrawing the measures is not contraindicated by
19 appropriate end-of-life care.

20 SECTION 22. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2200.22 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:

23 A. A medical examiner shall cooperate with procurement
24 organizations to maximize the opportunity to recover anatomical

1 gifts for the purpose of transplantation, therapy, research, or
2 education.

3 B. If a medical examiner receives notice from a procurement
4 organization that an anatomical gift might be available or was made
5 with respect to a decedent whose body is under the jurisdiction of
6 the medical examiner and a postmortem examination is going to be
7 performed, unless the medical examiner denies recovery in accordance
8 with Section 23 of this act, the medical examiner or designee shall
9 conduct a postmortem examination of the body or the part in a manner
10 and within a period compatible with its preservation for the
11 purposes of the gift.

12 C. A part may not be removed from the body of a decedent under
13 the jurisdiction of a medical examiner for transplantation, therapy,
14 research, or education unless the part is the subject of an
15 anatomical gift. The body of a decedent under the jurisdiction of
16 the medical examiner may not be delivered to a person for research
17 or education unless the body is the subject of an anatomical gift.
18 This subsection does not preclude a medical examiner from performing
19 the medicolegal investigation upon the body or parts of a decedent
20 under the jurisdiction of the medical examiner.

21 SECTION 23. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2200.23 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:

24

1 A. Upon request of a procurement organization, a medical
2 examiner shall release to the procurement organization the name,
3 contact information, and available medical and social history of a
4 decedent whose body is under the jurisdiction of the medical
5 examiner. If the decedent's body or part is medically suitable for
6 transplantation, therapy, research, or education, the medical
7 examiner shall release portmortem examination results to the
8 procurement organization. The procurement organization may make a
9 subsequent disclosure of the postmortem examination results or other
10 information received from the medical examiner only if relevant to
11 transplantation, therapy, research or education.

12 B. The medical examiner may conduct a medicolegal investigation
13 by reviewing all medical records, laboratory test results, x-rays,
14 other diagnostic results, and other information that any person
15 possesses about a donor or prospective donor whose body is under the
16 jurisdiction of the medical examiner that the medical examiner
17 determines may be relevant to the investigation.

18 C. A person who has any information requested by a medical
19 examiner pursuant to subsection B of this section shall provide that
20 information as expeditiously as possible to allow the medical
21 examiner to conduct the medicolegal investigation within a period
22 compatible with the preservation of parts for the purpose of
23 transplantation, therapy, research, or education.

24

1 D. If an anatomical gift has been or might be made of a part of
2 a decedent whose body is under the jurisdiction of the medical
3 examiner and a postmortem examination is not required, or the
4 medical examiner determines that a postmortem examination is
5 required but that the recovery of the part that is the subject of an
6 anatomical gift will not interfere with the examination, the medical
7 examiner and procurement organization shall cooperate in the timely
8 removal of the part from the decedent for the purpose of
9 transplantation, therapy, research, or education.

10 E. The medical examiner and procurement organizations shall
11 enter into an agreement setting forth protocols and procedures to
12 govern relations between the parties when an anatomical gift of a
13 part from the decedent under the jurisdiction of the medical
14 examiner has been or might be made, but the medical examiner
15 believes that the recovery of the part could interfere with the
16 postmortem investigation into the decedent's cause or manner of
17 death. Decisions regarding the recovery of organs, tissue and eyes
18 from such a decedent shall be made in accordance with the agreement.
19 In the event that the medical examiner denies recovery of an
20 anatomical gift, the procurement organization may request the Chief
21 Medical Examiner to reconsider the denial and to permit the recovery
22 to proceed. The parties shall evaluate the effectiveness of the
23 protocols and procedures at regular intervals but no less frequently
24 than every two (2) years.

1 F. If the medical examiner or designee allows recovery of a
2 part under subsection D or E of this section, the procurement
3 organization, upon request, shall cause the physician or technician
4 who removes the part to provide the medical examiner with a record
5 describing the condition of the part, a biopsy, a photograph, and
6 any other information and observations that would assist in the
7 portmortem examination.

8 G. If a medical examiner or designee is required to be present
9 at a removal procedure under subsection E of this section, upon
10 request the procurement organization requesting the recovery of the
11 part shall reimburse the medical examiner or designee for the
12 additional costs incurred in complying with subsection E of this
13 section.

14 SECTION 24. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 2200.24 of Title 63, unless
16 there is created a duplication in numbering, reads as follows:

17 In applying and construing this uniform act, consideration must
18 be given to the need to promote uniformity of the law with respect
19 to its subject matter among states that enact it.

20 SECTION 25. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2200.25 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:

23 This act modifies, limits, and supersedes the Electronic
24 Signatures in Global and National Commerce Act, 15 U.S.C. Section

1 7001 et seq., but does not modify, limit or supersede Section 101(a)
2 of that act, 15 U.S.C. Section 7001, or authorize electronic
3 delivery of any of the notices described in Section 103(b) of that
4 act, 15 U.S.C. Section 7003(b).

5 SECTION 26. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2200.26 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 Any references in the Oklahoma Statutes to the Uniform
9 Anatomical Gift Act shall mean the Oklahoma Uniform Anatomical Gift
10 Act.

11 SECTION 27. AMENDATORY 63 O.S. 2001, Section 2210, is
12 amended to read as follows:

13 Section 2210. A. 1. With respect to a gift of ~~an eye~~ eyes as
14 provided for in this chapter, ~~a licensed embalmer, as defined by the~~
15 ~~Funeral Services Licensing Act, Section 396 et seq. of Title 59 of~~
16 ~~the Oklahoma Statutes, or other persons~~ eye bank technicians who
17 have successfully completed a course in eye ~~enucleation~~ recovery in
18 the State of Oklahoma or elsewhere and have received a certificate
19 of competence from the Eye Bank Association of America, may
20 ~~enucleate~~ recover eyes for such gift after proper certification of
21 death by a physician and compliance with the extent of such gift as
22 required by the Oklahoma Uniform Anatomical Gift Act, ~~Section 2201~~
23 ~~et seq. of this title.~~

24

1 2. No such properly certified ~~embalmer or other person~~ eye bank
2 technician acting in accordance with the terms of this chapter shall
3 have any liability, civil or criminal, for such eye ~~enucleation~~
4 recovery.

5 B. No eye bank shall operate in Oklahoma unless the eye bank:

6 1. Within one (1) year after beginning operation, is accredited
7 by the Eye Bank Association of America or other nationally
8 recognized accrediting association for eye banks;

9 2. Employs an eye bank technician certified by the Eye Bank
10 Association of America or other nationally recognized accrediting or
11 certifying association for eye banks;

12 3. Has as its medical director a board-certified ophthalmic
13 surgeon licensed to practice in this state; and

14 4. Gives priority to the needs of patients being treated in
15 Oklahoma.

16 C. Before developing a new eye bank, the person proposing to
17 operate the eye bank shall apply to the State Commissioner of Health
18 for a permit. The permit application shall be in such form as the
19 Commissioner shall prescribe and shall include a demonstration of
20 the eye bank's probable impact on existing eye banks serving the
21 area where the new eye bank is to be located. The permit
22 application shall be accompanied by a filing fee equal to one
23 quarter of one percent (.25%) of the capital cost of the proposed
24 eye bank, with a minimum fee of Five Hundred Dollars (\$500.00).

1 D. Upon receipt of a completed permit application, the
2 Commissioner shall cause public notice to be published in a
3 newspaper of general circulation in the area where the eye bank is
4 to be located and in a newspaper of general circulation in the area
5 where the application is available for inspection. Any person may
6 submit written comments regarding the proposed eye bank to the
7 Commissioner.

8 E. The Commissioner shall issue or deny the permit within
9 seventy-five (75) days after publication of the notice. A permit
10 shall expire thirty-six (36) months from the date of issue. If
11 construction is not completed on or before the permit's expiration
12 date, the permit shall be null and void.

13 F. Any issuance or denial of a permit may be appealed under
14 Article II of the Administrative Procedures Act, Section 308a of
15 Title 75 of the Oklahoma Statutes.

16 G. Each eye bank operating in this state shall report annually
17 to the Commissioner on a form prescribed by the Commissioner. The
18 form shall include information on the following:

- 19 1. The accreditation status of the eye bank;
- 20 2. The certification status of the eye bank technician;
- 21 3. The identity and qualifications of the medical director;
- 22 4. The numbers and geographic origins of donor corneas and
23 whole eyes; and

24

1 5. The numbers and geographic destinations of corneas and other
2 parts of eyes.

3 SECTION 28. REPEALER 63 O.S. 2001, Sections 2201, 2202,
4 as amended by Section 2, Chapter 395, O.S.L. 2004, 2203, as amended
5 by Section 1, Chapter 176, O.S.L. 2003, 2204, 2205, 2206, 2207,
6 2208, 2209, 2210.1, 2212, 2213, 2214, as amended by Section 2,
7 Chapter 176, O.S.L. 2003, 2215, 2216, 2217, 2218 and Section 3,
8 Chapter 176, O.S.L. 2003, as amended by Section 5, Chapter 395,
9 O.S.L. 2004 (63 O.S. Supp. 2007, Sections 2202, 2203, 2214 and
10 2220.10), are hereby repealed.

11 SECTION 29. This act shall become effective November 1, 2008.

12

13 51-2-10689 SAB 03/27/08

14

15

16

17

18

19

20

21

22

23

24