STATE OF OKLAHOMA

1st Session of the 52nd Legislature (2009)

SENATE BILL 622 By: Coffee

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Uniform Anatomical Gift Act; providing short title; defining terms; providing for application; permitting anatomical gifts in certain circumstances; stating the manner by which certain persons may make an anatomical gift; clarifying validation of anatomical gifts in certain circumstances; providing for the amendment or revocation of an anatomical gift; stating requirements of certain records; permitting refusal to make an anatomical gift; prohibiting certain persons from making, amending or revoking an anatomical gift for another person in certain circumstances; permitting certain persons to make an anatomical gift for another person in certain circumstances; providing for certain objections; requiring certain notice of revocation; stating entities to which an anatomical gift may be made; providing for the passing of a gift in certain circumstances; requiring certain use of an anatomical gift in specified circumstances; prohibiting acceptance of an anatomical gift in certain circumstances; clarifying allocation of organs; requiring search of a person in certain circumstances; requiring certain document be sent to certain entity; prohibiting certain liability in specified circumstances; requiring examination and copying of certain document; directing certain access; permitting certain examinations in specified circumstances; requiring certain opportunity for revocation or amendment; permitting acceptance or rejection of an anatomical gift; prohibiting certain participation; directing certain agreement or affiliation; permitting certain fine or imprisonment in certain circumstances; authorizing certain charge;

stating validation of certain document; authorizing the Department of Public Safety to establish or contract for certain registry; requiring certain cooperation; stating requirements of certain registry; providing for privacy of certain information; providing for certain conflict; requiring certain compliance; providing for certain conflict; prohibiting certain removal; directing release of certain information in specified circumstances; permitting certain investigations; requiring certain agreement; permitting denial of recovery in certain circumstances; requiring certain reimbursement; directing uniform application and construction of act; stating relationship to certain federal laws; clarifying references; prohibiting compensation for certain persons in specified situation; amending 63 O.S. 2001, Section 2210, which relates to eye banks; updating obsolete language; repealing Section 314, Chapter 382, O.S.L. 2008; repealing 63 O.S. 2001, Sections 2201, 2202, as amended by Section 2, Chapter 395, O.S.L. 2004, 2203, as amended by Section 1, Chapter 176, O.S.L. 2003, 2204, 2205, 2206, 2207, 2208, 2209 and 2217 (63 O.S. Supp. 2007, Sections 2202 and 2203), which relate to the Uniform Anatomical Gift Act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

As used in the Oklahoma Uniform Anatomical Gift Act:

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

2. "Agent" means an individual:

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

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

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

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

5. "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 and does not include a person to whom an anatomical gift could pass under Section 11 of this act;

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

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

8. “Donor registry” means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts;

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

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

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

12. “Hospital” means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state;

13. “Identification card” means an identification card issued by the Department of Public Safety;

14. “Know” means to have actual knowledge;

15. “Minor” means an individual who is under eighteen (18) years of age;

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

17. “Parent” means a parent whose parental rights have not been terminated;

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

19. “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

20. “Physician” means an individual authorized to practice medicine or osteopathy under the law of any state;

21. “Procurement organization” means an eye bank, organ procurement organization, or tissue bank;

22. “Prospective donor” means an individual who is dead or near death and who has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education and does not include an individual who has made a refusal;

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

24. “Recipient” means an individual into whose body a decedent’s part has been or is intended to be transplanted;

25. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

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

27. “Sign” means, with the present intent to authenticate or adopt a record, to:

a. execute or adopt a tangible symbol, or

b. attach to or logically associate with the record an electronic symbol, sound, or process;

28. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

29. “Technician” means an individual determined to be qualified to remove or process parts by an appropriate organization that is

licensed, accredited, or regulated under federal or state law, including an enucleator;

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

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

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

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

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2200.4A of Title 63, unless there is created a duplication in numbering, reads as follows:

Subject to Section 6 of this act, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 5 of this act by:

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

a. emancipated, or

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

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.

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

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 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 two adults, at least one of whom is a disinterested witness; or

4. As provided in subsection B of this section.

B. A donor or other person authorized to make an anatomical gift under Section 4 of this act 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 two 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.

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

D. 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.

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

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

1. A record signed by:

a. the donor,

b. the other person, or

c. subject to subsection B, 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 pursuant to subparagraph c of paragraph 1 of subsection A of this section must:

1. Be witnessed by at least two 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.

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

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

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 two adults, at least one of whom is a disinterested witness.

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

1. Be witnessed by at least two 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.

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 pursuant to Section 5 of this act 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. Except as otherwise provided in subsection H of Section 8 of this act, 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.

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

A. Except as otherwise provided in subsection G of this section and 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 making, 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 of this act or an amendment to an anatomical gift of the donor's body or part under Section 6 of this act.

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

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

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

E. In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 4 of this act, 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 Section 4 of this act, an anatomical gift of a part for one or more of the purposes set forth in Section 4 of this act 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 Section 5 or 10 of this act.

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

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

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

A. Subject to subsections B and C of this section and unless barred by Section 7 or 8 of this act, an anatomical gift of a

decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

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

2. The spouse of the decedent;

3. Adult children of the decedent;

4. Parents of the decedent;

5. Adult siblings of the decedent;

6. Adult grandchildren of the decedent;

7. Grandparents of the decedent;

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

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

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

B. If there is more than one member of a class listed in paragraph 1, 3, 4, 5, 6, 7 or 9 of subsection A 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 whom the gift may pass under Section 11 of this act 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.

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

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

A. A person authorized to make an anatomical gift under Section 9 of this act 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.

B. Subject to subsection C of this section, an anatomical gift by a person authorized under Section 9 of this act may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under Section 9 of this act may be:

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

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

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

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

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

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

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; or

3. An eye bank or tissue bank.

B. If an anatomical gift to an individual under paragraph 2 of subsection A of this section cannot be transplanted into the individual, the part passes in accordance with subsection G of this

section in the absence of 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; and

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, the gift must be used for transplantation or therapy, if suitable. 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, 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 for transplantation, research, or therapy, 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; and

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 paragraph 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 pursuant to subsections A through H of 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 or 10 of this act or if the person knows that the decedent made a refusal under Section 7 of this act that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

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

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

A. The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

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

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

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

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

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

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 11 of this act.

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

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 Department of Public Safety 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 must be allowed reasonable access to information in the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

C. When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

D. Unless prohibited by any other provisions of law, at any time after a donor's death, the person to whom a part passes under Section 11 of this act may conduct any reasonable examination

necessary to ensure the medical suitability of the body or part for its intended purpose.

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

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

G. Upon referral by a hospital under subsection A of this section, a procurement organization shall make a reasonable search for any person listed in Section 9 of this act 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.

H. Subject to subsection I of Section 11 and Section 23 of this act, the rights of the person to which a part passes under Section 11 of this act 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 that 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 11 of this act, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

I. 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.

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

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

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

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

A. Except as otherwise provided in subsection B of this section, a person that, for valuable consideration, knowingly

purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a felony and upon conviction is subject to a fine of not more than Fifty Thousand Dollars ($50,000.00) or imprisonment for not more than five (5) years, or both such fine and imprisonment.

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

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

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

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

A. A person who acts in accordance with this act or with the applicable anatomical gift law of another state or attempts in good

faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

B. 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.

C. 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 paragraph 2, 3, 4, 5, 6, 7 or 8 of subsection A of Section 9 of this act relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

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

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, has 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.

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

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

2. The registry shall maintain and update as needed the pertinent information on all Oklahomans who have indicated a willingness to be an organ donor, eye donor or tissue donor by a designation on a driver license, a state identification card, a donor card, an online or other organ donor registry enrollment form, or any other document of gift.

3. The registry and all information therein shall be confidential and shall be subject to access only by the designated

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

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

a. providing a means of recovering an anatomical gift for transplantation or research, and

b. collecting data to develop and evaluate the effectiveness of educational initiatives promoting organ, eye and tissue donation.

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

1. The information placed in the registry may include personal information and highly restricted personal information, as defined in 18 U.S.C. Section 2721, and access to such information shall

conform to the Driver's Privacy Protection Act (DPPA), 18 U.S.C. Sections 2721 through 2725;

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

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

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

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

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

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

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

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

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

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

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

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

A. As used in this section:

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

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

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

B. If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective

donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this act to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 9 of this act. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

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

A. A medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

B. If a medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of

the medical examiner and a postmortem examination is going to be performed, unless the medical examiner denies recovery in accordance with Section 23 of this act, the medical examiner or designee shall conduct a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

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

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

A. Upon request of a procurement organization, a medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical

examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the medical examiner only if relevant to transplantation, therapy, research or education.

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

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

D. If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination is not required, or the medical examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely

removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

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

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

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

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

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

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

This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

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

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

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2200.27A of Title 63, unless there is created a duplication in numbering, reads as follows:

Neither the Office of the Chief Medical Examiner nor any employee of the Office of the Chief Medical Examiner of this state shall receive compensation of any kind from any organ, eye or tissue recovery organization except as provided in subsection G of Section 23 of this act.

SECTION 28. AMENDATORY 63 O.S. 2001, Section 2210, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

1. The accreditation status of the eye bank;

2. The certification status of the eye bank technician;

3. The identity and qualifications of the medical director;

4. The numbers and geographic origins of donor corneas and whole eyes; and

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

SECTION 29. REPEALER Section 314, Chapter 382, O.S.L. 2008 is hereby repealed.

SECTION 30. REPEALER 63 O.S. 2001, Sections 2201, 2202, as amended by Section 2, Chapter 395, O.S.L. 2004, 2203, as amended by Section 1, Chapter 176, O.S.L. 2003, 2204, 2205, 2206, 2207, 2208, 2209, 2210.1, 2212, 2213, 2214, as amended by Section 2, Chapter 176, O.S.L. 2003, 2215, 2216, 2217, 2218 and Section 3, Chapter 176, O.S.L. 2003, as amended by Section 5, Chapter 395, O.S.L. 2004 (63 O.S. Supp. 2008, Sections 2202, 2203, 2214 and 2220.10), are hereby repealed.

SECTION 31. This act shall become effective November 1, 2009.

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