ENGROSSED SENATE
BILL NO. 1580

By: David and Johnson (Constance) of the Senate

and

Cox of the House

An Act relating to anatomical gifts; amending 63 O.S. 2011, Section 91, which relates to the State Anatomical Board; modifying membership of the State Anatomical Board; modifying duties of Board; creating the Anatomical Donor Program Registration Act; providing short title; requiring the Board to register certain entities; requiring certain entities to register with the Board; requiring the Board to specify certain eligibility requirements; requiring the Board to prescribe certain rules of conduct; providing for certain violations; directing the Board to report certain violations; requiring the Board to keep certain records; authorizing the Board to issue temporary registrations in certain circumstances; permitting the Board to maintain certain office; directing the Board to promulgate certain rules; amending 63 O.S. 2011, Section 2200.2A, which relates to the Oklahoma Uniform Anatomical Gift Act; modifying definitions; amending 63 O.S. 2011, Section 2200.11A, which relates to purpose of gift; clarifying language; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 91, is amended to read as follows:

Section 91. A. There is hereby re-created, to continue until July 1, 2012, in accordance with the provisions of the Oklahoma

Sunset Law, an oversight Board to be known as the State Anatomical Board, to be composed of the following members:

1. The Deans or their designee of each accredited medical school and osteopathic medical school within the State of Oklahoma~~, the~~;

2. The persons heading the Department of Anatomy, or comparable department, in the medical and osteopathic medical schools or their designee ~~and two (2)~~;

3. Two persons appointed jointly by the presidents of institutions of higher education within the state which have educational programs other than medical which require on a regular basis human anatomical materials, provided that these programs have been approved by the State Regents for Higher Education; and

4. One at-large member appointed by the Governor to represent the interests of the citizens of this state.

B. It shall be the duty of the State Anatomical Board to register all anatomical donor programs and non-transplant tissue banks and to designate agents to provide for the collection, preservation, storage, distribution, delivery, recovery from users, cremation and final disposition of all dead human bodies used for health science education and research in the State of Oklahoma.

C. The Board shall elect from its membership a chairperson who shall perform such other duties as the Board may prescribe by rule. The Board shall have full power to establish rules for its

government, to appoint and remove officers, and to appoint an executive director who shall keep full and complete minutes of its transactions and manage the affairs of the Board. The expenditures authorized in this section shall not be a charge against the state, but shall be paid by the agent designated by the Board to receive, store, issue, and cremate human anatomical materials. Records shall also be kept by the agent of all bodies received and distributed for the period of time authorized by the Records Disposition Schedule. The name of the oversight Board shall be the State Anatomical Board, hereinafter called the Anatomical Board. The Anatomical Board may, in its discretion, exempt any county, district, or institution from the provisions of this act in any calendar year for any length of time.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 109 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. This section shall be known and may be cited as the "Anatomical Donor Program Registration Act".

B. The State Anatomical Board shall register all anatomical donor programs and non-transplant tissue banks in the state which meet the requirements of the Anatomical Donor Program Registration Act.

C. Before an anatomical donor program or a non-transplant tissue bank may receive whole body or partial body donations from

any person or entity inside or outside the state, the anatomical donor program or non-transplant tissue bank shall register with the Board.

D. The Board shall specify the eligibility requirements for registration as an anatomical donor program or non-transplant tissue bank which, at a minimum, shall require such entities to be non-profit organizations.

E. The Board shall prescribe rules of conduct governing the practice of anatomical donor programs or non-transplant tissue banks registered pursuant to the Anatomical Donor Program Registration Act.

F. In order to address persons or entities which violate the provisions of the Anatomical Donor Program Registration Act or any rules promulgated thereto, the Board may:

1. Deny the issuance of a registration or suspend, revoke, or refuse to renew the registration of an anatomical donor program or non-transplant tissue bank, provided, however, that the Board may review, affirm, vacate, or modify a determination to deny, suspend, revoke, or refuse registration if the anatomical donor program or non-transplant tissue bank takes corrective actions;

2. Establish and administer administrative fines;

3. Initiate disciplinary or injunctive proceedings; and

4. Report alleged violations to the Attorney General or a district attorney as appropriate for further investigation or prosecution.

G. The Board shall report any violation it observes of the Oklahoma Uniform Anatomical Gift Act to the State Department of Health for further investigation and appropriate action.

H. The Board shall keep accurate and complete records of any proceedings initiated under the Anatomical Donor Program Registration Act.

I. The Board may issue a temporary registration to an anatomical donor program or non-transplant tissue bank which was previously registered but whose facilities were destroyed or damaged in order that, when appropriate safeguards are in place, the anatomical donor program or non-transplant tissue bank may continue to operate. During the effective period of the temporary registration, the Board may waive certain requirements if the anatomical donor program or non-transplant tissue bank is making a good faith effort to rebuild and restore its operations in order to meet all registration requirements.

J. The Board may maintain an office or secure facilities as deemed necessary by the Board in order to implement the Anatomical Donor Program Registration Act.

K. The Board shall promulgate rules as necessary to implement the provisions of the Anatomical Donor Program Registration Act.

SECTION 3. AMENDATORY 63 O.S. 2011, Section 2200.2A, is amended to read as follows:

Section 2200.2A. 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 donor program" means an entity that is registered with the State Anatomical Board to receive and issue bodies or body parts for education or research;

4. "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.~~ 5. "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.~~ 6. "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~~ 2200.11A of this title;

~~6.~~ 7. "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.~~ 8. "Donor" means an individual whose body or part is the subject of an anatomical gift;

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

~~9.~~ 10. "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.~~ 11. "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.~~ 12. "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.~~ 13. "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.~~ 14. "Identification card" means an identification card issued by the Department of Public Safety;

~~14.~~ 15. "Know" means to have actual knowledge;

~~15.~~ 16. "Minor" means an individual who is under eighteen (18) years of age;

~~16.~~ 17. "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.~~ 18. "Non-transplant tissue bank" means an entity that is registered with the State Anatomical Board to engage in the recovery, screening, testing, processing, storage, or distribution of tissue for education and research;

19. "Parent" means a parent whose parental rights have not been terminated;

~~18.~~ 20. "Part" means an organ, an eye, or tissue of a human being and does not include the whole body;

~~19.~~ 21. "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.~~ 22. "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state;

~~21.~~ 23. "Procurement organization" means an eye bank, organ procurement organization, or tissue bank;

~~22.~~ 24. "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.~~ 25. "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.~~ 26. "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted;

~~25.~~ 27. "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.~~ 28. "Refusal" means a record created under Section ~~7 of this act~~ 2200.7A of this title that expressly states an intent to

bar other persons from making an anatomical gift of an individual's body or part;

~~27.~~ 29. "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.~~ 30. "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.~~ 31. "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.~~ 32. "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.~~ 33. "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.~~ 34. "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

SECTION 4. AMENDATORY 63 O.S. 2011, Section 2200.11A, is amended to read as follows:

Section 2200.11A. 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 as designated by the State Anatomical Board;

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~~ anatomical donor program or non-transplant tissue bank registered with the State Anatomical Board.

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~~ Sections 2200.5A or 2200.10A of this title or if the person knows that the decedent made a refusal under Section ~~7 of this act~~ 2200.7A of this title 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~~ the Oklahoma Uniform Anatomical Gift Act affects the allocation of organs for transplantation or therapy.

SECTION 5. This act shall become effective November 1, 2012.

Passed the Senate the 6th day of March, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

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Presiding Officer of the House of Representatives