# **SENATE . . . . . . . . . . . . . . . . No. 1098**

### The Commonwealth of Massachusetts

PRESENTED BY:

Susan C. Fargo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act adopting the Revised Uniform Anatomical Gift Act.

#### PETITION OF:

NAME:	DISTRICT/ADDRESS:
Susan C. Fargo	
Anne M. Gobi	5th Worcester
Bradley H. Jones, Jr.	20th Middlesex
Robert L. Hedlund	
James B. Eldridge	
Jennifer L. Flanagan	
Barry R. Finegold	
Karen E. Spilka	
Harriette L. Chandler	
Anthony W. Petruccelli	
Patricia D. Jehlen	
Sonia Chang-Diaz	
Thomas M. McGee	Third Essex and Middlesex
Jennifer E. Benson	37th Middlesex
Sean Garballey	23rd Middlesex
Denise Provost	27th Middlesex
Kevin J. Kuros	8th Worcester
Thomas A. Golden, Jr.	16th Middlesex

Katherine M. Clark	Middlesex and Essex
Benjamin Swan	11th Hampden
Jason M. Lewis	31st Middlesex
Timothy J. Toomey, Jr.	26th Middlesex
Carolyn C. Dykema	8th Middlesex
Daniel A. Wolf	
Frank I. Smizik	15th Norfolk
Cory Atkins	14th Middlesex
James E. Timilty	
James Arciero	2nd Middlesex
Viriato Manuel deMacedo	1st Plymouth

FILED ON: 1/21/2011

## **SENATE . . . . . . . . . . . . . . . No. 1098**

By Ms. Fargo, petition (accompanied by bill, Senate, No. 1098) of deMacedo, Eldridge, Provost and other members of the General Court for legislation to adopt the Revised Uniform Anatomical Gift Act [Joint Committee on Public Health].

### The Commonwealth of Massachusetts

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An Act adopting the Revised Uniform Anatomical Gift Act.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to to provide for the promotion of organ and tissue donation, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. Sections 5A through 13, inclusive of chapter 113 shall be repealed.
- 2 SECTION 2. The General Laws are hereby amended by inserting after chapter 113 the
- 3 following chapter:-
- 4 CHAPTER 113A
- 5 UNIFORM ANATOMICAL GIFT ACT
- 6 Section 1. SHORT TITLE. This act may be cited as the "Uniform Anatomical Gift Act".
- 7 Section 2. DEFINITIONS. In this act:
- 8 (1) "Adult" means an individual who is at least 18 years of age.

- 9 (2) "Agent" means an individual:
- 10 (A) authorized to make health-care decisions on the principal's behalf by a power of 11 attorney for health care including but not limited to a health care agent appointed under a health 12 care proxy pursuant to chapter 201D; or
- 13 (B) expressly authorized to make an anatomical gift on the principal's behalf by any other 14 record signed by the principal.
- 15 (3) "Anatomical gift" means a donation of all or part of a human body to take effect after 16 the donor's death for the purpose of transplantation, therapy, research or education.
- 17 (4) "Decedent" means a deceased individual and includes a stillborn infant or 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. The term does not include a individual to which an anatomical gift could pass under section 11.
- 23 (6) "Document of gift" means a donor card or other record used to make an anatomical 24 gift. The term includes a statement or symbol on a driver's license, identification card, or 25 inclusion in a donor registry.
- 26 (7) "Donor" means an individual whose body or part is the subject of an anatomical gift.
- 27 (8) "Donor registry" means the Massachusetts Donor Registry established under section 28 20 of this chapter as well as any other database that identifies donors and complies with said 29 section 20.

- 30 (9) "Driver's license" means a license or permit issued by the registry of motor vehicles 31 to an individual to operate a vehicle, whether or not conditions are attached to the license or 32 permit.
- 33 (10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or 34 state law to engage in the recovery, screening, testing, processing, storage, or distribution of 35 human eyes or portions of human eyes.
- 36 (11) "Guardian" means an individual appointed by a court to make decisions regarding 37 the support, care, education, health, or welfare of another individual. The term does not include a 38 guardian ad litem.
- 39 (12) "Hospital" means a facility licensed as a hospital under the law of any state or a 40 facility operated as a hospital by the United States, a state, or a subdivision of a state.
- 41 (13) "Identification card" means an identification card issued by the registry of motor 42 vehicles.
- 43 (14) "Know" means to have actual knowledge.
- 44 (15) "Minor" means an individual who is under 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.
- 48 (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. The term does not include the whole body or a gamete as defined in section 2 of chapter 111L, which shall be donate in accordance with chapter 111L.
- (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.
- 55 (20) "Physician" means an individual authorized to practice medicine or osteopathy 56 under the law of any state.
- 57 (21) "Procurement organization" means an eye bank, organ procurement organization, or 58 tissue bank.
- (22) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term 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.
- 66 (24) "Recipient" means an individual into whose body a decedent's part has been or is 67 intended to be transplanted.
- 68 (25) "Record" means information that is inscribed on a tangible medium or that is stored 69 in an electronic or other medium and is retrievable in perceivable form.

- 70 (26) "Refusal" means a record created under section 7 that expressly states an intent to 71 bar other persons from making an anatomical gift of an individual's body or part.
- 72 (27) "Sign" means, with the present intent to authenticate or adopt a record:
- (A) to execute or adopt a tangible symbol; or
- (B) to attach to or logically associate with the record an electronic symbol, sound,or process.
- 76 (28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the 77 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of 78 the United States.
- 79 (29) "Technician" means an individual determined to be qualified to remove or process 80 parts by an appropriate organization that is licensed, accredited, or regulated under federal or 81 state law. The term includes an enucleator.
- 82 (30) "Tissue" means a portion of the human body other than an organ or an eye. The term 83 does not include blood unless the blood is donated for the purpose of research or education.
- 84 (31) "Tissue bank" means a person that is licensed, accredited, or regulated under federal 85 or state law to engage in the recovery, screening, testing, processing, storage, or distribution of 86 tissue.
- 87 (32) "Transplant hospital" means a hospital that furnishes organ transplants and other 88 medical and surgical specialty services required for the care of transplant patients.

89	Section 3. APPLICABILITY. This act applies to an anatomical gift or amendment to,
90	revocation of, or refusal to make an anatomical gift, whenever made.
91	Section 4. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR'S DEATH.
92	Subject to section 8, an anatomical gift of a donor's body or part may be made during the life of
93	the donor for the purpose of transplantation, therapy, research, or education in the manner
94	provided in section 5 by:
95	(1) the donor, if the donor is an adult or if the donor is a minor and is:
96	(A) emancipated; or
97	(B) authorized under state law to apply for a driver's license or identification
98	card;
99	(2) an agent of the donor including but not limited to a health care agent appointed under
100	a health care proxy pursuant to chapter 201D, unless the power of attorney for health care or
101	other record prohibits the agent from making an anatomical gift;
102	(3) a parent of the donor, if the donor is an unemancipated minor; or
103	(4) the donor's guardian.
104	Section 5. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S
105	DEATH.
106	(a) A donor may make an anatomical gift:
107	(1) by authorizing a statement or symbol indicating that the donor has made an
108	anatomical gift to be imprinted on the donor's driver's license or identification card.

110 (3) during a terminal illness or injury of the donor, by any form of communication 111 addressed to at least two adults, at least one of whom is a disinterested witness; or 112 (4) as provided in subsection (b). 113 (b) A donor or other individual authorized to make an anatomical gift under section 4 may make a gift by a donor card or other record signed by the donor or other individual making 114 the gift or by authorizing that a statement or symbol indicating that the donor has made an 115 116 anatomical gift be included on a donor registry. If the donor or other individual is physically 117 unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must: 118 119 (1) be witnessed by at least 2 adults, at least 1 of whom is a disinterested witness, who have signed at the request of the donor or the other individual; and 120 121 (2) state that it has been signed and witnessed as provided in clause (1). 122 (c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift. 123 124 (d) An anatomical gift made by will takes effect upon the donor's death whether or not 125 the will is probated. Invalidation of the will after the donor's death shall not invalidate such gift. 126 Section 6. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S 127 DEATH.

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(2) by a will;

128	(a) Subject to section 8, a donor or other individual authorized to make an anatomical gift
129	under section 4 may amend or revoke an anatomical gift by:
130	(1) a record signed by:
131	(A) the donor;
132	(B) the other individual; or
133	(C) subject to subsection (b), another individual acting at the direction of
134	the donor or the other individual if such donor or other individual is physically unable to sign; or
135	(2) a later-executed document of gift that amends or revokes a previous document
136	of gift or portion of a document of gift, either expressly or by inconsistency.
137	(b) A record signed pursuant to subsection (a)(1)(C) must:
138	(1) be witnessed by at least 2 adults, at least 1 of whom is a disinterested witness,
139	who have signed at the request of the donor or the other individual; and
140	(2) state that it has been signed and witnessed as provided in paragraph (1).
141	(c) Subject to section 8, a donor or other individual authorized to make an anatomical gift
142	under section 4 may revoke an anatomical gift by the destruction or cancellation of the document
143	of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the
144	gift.
145	(d) A donor may amend or revoke an anatomical gift that was not made in a will by any
146	form of communication during a terminal illness or injury addressed to at least 2 adults, at least 1
147	of whom is a disinterested witness.

148	(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the
149	manner provided for amendment or revocation of wills or as provided in subsection (a).
150	Section 7. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF REFUSAL.
151	(a) An individual may refuse to make an anatomical gift of the individual's body or part
152	by:
153	(1) a record signed by:
154	(A) the individual; or
155	(B) subject to subsection (b), another individual acting at the direction of
156	the individual if the individual is physically unable to sign;
157	(2) the individual's will, whether or not the will is admitted to probate or
158	invalidated after the individual's death; or
159	(3) any form of communication made by the individual during the individual's
160	terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested
161	witness.
162	(b) A record signed pursuant to subsection (a)(1)(B) must:
163	(1) be witnessed by at least 2 adults, at least 1 of whom is a disinterested witness,
164	who have signed at the request of the individual; and
165	(2) state that it has been signed and witnessed as provided in clause (1).
166	(c) An individual who has made a refusal may amend or revoke the refusal:

- (1) in the manner provided in subsection (a) for making a refusal;
- 168 (2) by subsequently making an anatomical gift pursuant to section 5 that is 169 inconsistent with the refusal; or
- 170 (3) by destroying or canceling the record evidencing the refusal, or the portion of 171 the record used to make the refusal, with the intent to revoke the refusal.
- (d) Except as otherwise provided in section 8(h), 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.
- 176 Section 8. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT OR 177 REVOCATION.
- 178 (a) Except as otherwise provided in subsection (g) and subject to subsection (f), in the
  179 absence of an express, contrary indication by the donor, a person other than the donor is barred
  180 from making, amending, or revoking an anatomical gift of a donor's body or part if the donor
  181 made an anatomical gift of the donor's body or part under section 5 or an amendment to an
  182 anatomical gift of the donor's body or part under section 6.
- 183 (b) A donor's revocation of an anatomical gift of the donor's body or part under 184 Section 6 is not a refusal and does not bar another person specified in sections 4 or 9 from 185 making an anatomical gift of the donor's body or part under section 5 or 10.
- 186 (c) If a individual other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 5 or an amendment to an anatomical gift of the donor's body or part

under section 6, another individual may not make, amend, or revoke the gift of the donor's body or part under section 10.

- (d) A revocation of an anatomical gift of a donor's body or part under section 6 by a
  person other than the donor does not bar another person from making an anatomical gift of the
  body or part under sections 5 or 10.
- (e) In the absence of an express, contrary indication by the donor or other person
  authorized to make an anatomical gift under section 4, 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 individual authorized to make an anatomical gift under section 4, an anatomical gift of a part for one or more of the purposes set forth in section 4 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 sections 5 or 10.
- 201 (g) If a donor who is an unemancipated minor dies, a parent of the donor who is 202 reasonably available may revoke or amend an anatomical gift of the donor's body or part.
- 203 (h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is 204 reasonably available may revoke the minor's refusal.
- 205 Section 9. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR 206 PART.
- 207 (a) Subject to subsections (b) and (c) and unless prohibited by section 7 or 8, an 208 anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or

209 education may be made by any member of the following classes of individuals who is reasonably 210 available, in the order of priority listed:

- 211 (1) an agent of the decedent at the time of death who could have made an 212 anatomical gift under section 4(2) immediately before the decedent's death;
- 213 (2) the spouse of the decedent;
- 214 (3) adult children of the decedent;
- 215 (4) parents of the decedent;
- 216 (5) adult siblings of the decedent;
- 217 (6) adult grandchildren of the decedent;
- 218 (7) grandparents of the decedent;
- 219 (8) an adult who exhibited special care and concern for the decedent;
- 220 (9) the persons who were acting as the guardians of the person of the decedent at 221 the time of death; and
- 222 (10) any other person having the authority to dispose of the decedent's body.
- (b) If there is more than 1 member of a class listed in subsection (a)(1),(3), (4), (5), (6), (7),(9) or (10) entitled to make an anatomical gift, an anatomical gift may be made by a member
- 225 of the class unless that member or a person to which the gift may pass under section 11 knows of
- an objection by another member of the class. If an objection is known, the gift may be made only
- 227 by a majority of the members of the class who are reasonably available.

- (c) An individual may not make an anatomical gift if, at the time of the decedent's death, an individual in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift
- 231 Section 10. MANNER OF MAKING, AMENDING, OR REVOKING ANATOMICAL 232 GIFT OF DECEDENT'S BODY OR PART.
- 233 (a) An individual authorized to make an anatomical gift under section 9 may make an
  234 anatomical gift by a document of gift signed by the individual making the gift or by that
  235 individual's oral communication that is electronically recorded or is contemporaneously reduced
  236 to a record and signed by the individual receiving the oral communication.
- 237 (b) Subject to subsection (c), an anatomical gift by a person authorized under section 9
  238 may be amended or revoked orally or in a record by any member of a prior class who is
  239 reasonably available. If more than one member of the prior class is reasonably available, the gift
  240 made by an individual authorized under section 9 may be:
- 241 (1) amended only if a majority of the reasonably available members agree to the 242 amending of the gift; or
- 243 (2) revoked only if a majority of the reasonably available members agree to the 244 revoking of the gift or if they are equally divided as to whether to revoke the gift.
- 245 (c) A revocation under subsection (b) is effective only if, before an incision has been 246 made to remove a part from the donor's body or before invasive procedures have begun to 247 prepare the recipient, the procurement organization, transplant hospital, or physician or 248 technician knows of the revocation.

249	Section 11. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT; PURPOSE OF
250	ANATOMICAL GIFT.
251	(a) An anatomical gift may be made to the following persons named in the document of
232	gift:
253	(1) a hospital; accredited medical school, dental school, college, or university;
254	organ procurement organization; or other appropriate person, for research or education;
255	(2) subject to subsection (b), an individual designated by the person making the
256	anatomical gift if the individual is the recipient of the part;
257	(3) an eye bank or tissue bank.
258	(b) If an anatomical gift to an individual under subsection (a)(2) cannot be transplanted
259	into the individual, the part passes in accordance with subsection (g) in the absence of an
260	express, contrary indication by the person making the anatomical gift.
261	(c) If an anatomical gift of one or more specific parts or of all parts is made in a
262	document of gift that does not name a person described in subsection (a) but identifies the
263	purpose for which an anatomical gift may be used, the following rules apply:
264	(1) If the part is an eye and the gift is for the purpose of transplantation or therapy,
265	then the gift passes to the appropriate eye bank.
266	(2) If the part is tissue and the gift is for the purpose of transplantation or therapy,
267	then the gift passes to the appropriate tissue bank.

268	(3) If the part is an organ and the gift is for the purpose of transplantation or
269	therapy, then the gift passes to the appropriate organ procurement organization as custodian of
270	the organ.

- 271 (4) If the part is an organ, an eye, or tissue and the gift is for the purpose of 272 research or education, then the gift passes to the appropriate procurement organization.
- 273 (d) For the purpose of subsection (c), if there is more than 1 purpose of an anatomical gift 274 set forth in the document of gift but the purposes are not set forth in any priority then the gift 275 must be used for transplantation or therapy, if suitable for those purposes. If the gift cannot be 276 used for transplantation or therapy, the gift may be used for research or education.
  - (e) If an anatomical gift of 1 or more specific parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift passes in accordance with subsection (g) and the parts must be used for transplantation or therapy if suitable and if not suitable for those purposes, may be used for research or education.

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- (f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", "body donor" or by a symbol or statement of similar import, the gift passes in accordance with subsection (g) and the parts must be used for transplantation or therapy if suitable and if not suitable for those purposes, may be used for research or education.
  - (g) For purposes of subsections (b), (e), and (f) the following rules apply:
- (1) If the part is an eye, then the gift passes to the appropriate eye bank.
- 288 (2) If the part is tissue, then the gift passes to the appropriate tissue bank.

- 289 (3) If the part is an organ, then the gift passes to the appropriate organ 290 procurement organization as custodian of the organ.
- 291 (h) An anatomical gift of an organ for transplantation or therapy, other than an 292 anatomical gift under subsection (a)(2), passes to the organ procurement organization as 293 custodian of the organ.
- 294 (i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the 295 decedent's body or part is not used for transplantation, therapy, research, or education, custody 296 of the body or part passes to the person under obligation to dispose of the body or part.
- 297 (j) A person may not accept an anatomical gift if the person knows that the gift was not
  298 effectively made under sections 5 or 10 or if the person knows that the decedent made a refusal
  299 under section 7 that was not revoked. For purposes of the subsection, if a person knows that an
  300 anatomical gift was made on a document of gift, the person is deemed to know of any
  301 amendment or revocation of the gift or any refusal to make an anatomical gift on the same
  302 document of gift.
- 303 (k) Except as otherwise provided in subsection (a)(2), nothing in this act affects the 304 allocation of organs for transplantation or therapy.

#### 305 Section 12. SEARCH AND NOTIFICATION.

306 (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:

309	(1) a law enforcement officer, firefighter, paramedic, or other emergency rescuer
310	finding the individual; and
311	(2) if no other source of the information is immediately available, a hospital, as
312	soon as practical after the individual's arrival at the hospital.
313	(b) If a document of gift or a refusal to make an anatomical gift is located by the search
314	required by subsection (a)(1) and the individual or deceased individual to whom it relates is
315	taken to a hospital, the person responsible for conducting the search shall send the document of
316	gift or refusal to the hospital.
317	(c) A person is not subject to criminal or civil liability for failing to discharge the duties
318	imposed by this section.
319	Section 13. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO
320	EXAMINE.
321	(a) A document of gift need not be delivered during the donor's lifetime to be effective.
322	(b) Upon or after an individual's death, a person in possession of a document of gift or a
323	refusal to make an anatomical gift with respect to the individual shall allow examination and
324	copying of the document of gift or refusal by a person authorized to make or object to the
325	making of an anatomical gift with respect to the individual or by a person to which the gift could
326	pass under section 11.

327 Section 14. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND 328 OTHERS.

- (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Massachusetts Donor Registry and any other 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.
- 333 (b) A procurement organization must be allowed reasonable access to information in the 334 records of the registry of motor vehicles through the donor registry as set forth in section 8D of 335 chapter 90 pursuant to section 20 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 assess 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 maintain the potential 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 law other than this act, at any time after a donor's death, the person to which a part passes under section 11 may conduct any reasonable examination necessary to assess the medical suitability of the body or part for its intended purpose.
- (e) Unless prohibited by law other than this act, an examination under subsection (c) or (d) may include but is not limited to pre and/or postmortem serological and blood and tissue compatibility testing as well as 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.

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- (g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in section 9 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, the rights of the person to which a part passes under section 11 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, 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 to 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 thatthe physician or technician is qualified to remove.

SECTION 15. COORDINATION OF PROCUREMENT AND USE. Each hospital shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

#### SECTION 16. SALE OR PURCHASE OF PARTS PROHIBITED.

- (a) Except as otherwise provided in subsection (b), a person who for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of such part from an individual is intended to occur after the individual's death shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 2 ½ years, or by a fine of not more than \$50,000 or by both such fine and imprisonment.
- 382 (b) A person may charge a reasonable amount for the removal, processing, preservation, 383 quality control, storage, transportation, implantation, or disposal of a part.
- Section 17. OTHER PROHIBITED ACTS. A person who, 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 to make a gift, shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 2 ½ years, or by a fine of not more than \$50,000 or by both such fine and imprisonment.

#### 390 Section 18. IMMUNITY.

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391 (a) A person that acts in accordance with this act or with the applicable anatomical gift 392 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. Following a donor's designation in a donor registry, signed statement by a donor in an advanced directive or donor card shall be prima facie evidence of good faith.

- (b) Neither the person making an anatomical gift nor the donor's estate shall be liable forany 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 section 9(a) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.
- Section 19. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION

  403 OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY.
- 404 (a) A document of gift is valid if executed in accordance with:
- 405 (1) this act;
- 406 (2) the laws of the state or country where it was executed; or
- 407 (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 409 executed.
- 410 (b) If a document of gift is valid under this section, the law of this state governs the 411 interpretation of the document of gift.

412 (c) A person may presume that a document of gift or amendment of an anatomical gift is 413 valid unless that person knows that it was not validly executed or was revoked.

#### Section 20. DONOR REGISTRY.

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415 (a) The registry of motor vehicles shall maintain the donor registry as set forth in section
416 8D of chapter 90 to identify individuals who have authorized an anatomical gift at the time of
417 driver's licensure, renewal or identification card issuance. The registrar is authorized to contract
418 with a qualified entity to assist with the continued development and maintenance of the donor
419 registry as set forth in section 8D of chapter 90 and to secure grants from public and private
420 sources and to receive and disburse funds which are assigned, donated or bequeathed to the
421 department to cover the costs of the donor registry as set forth in section 8D of chapter 90.

#### (b) A donor registry must:

- 423 (1) provide a database that includes donors who have made an anatomical gift and 424 provide a mechanism for an anatomical gift to be removed from the database;
- 425 (2) be accessible to a procurement organization to allow it to obtain relevant 426 information on the donor registry to determine, at or near death of the donor or a prospective 427 donor, whether the donor or prospective donor has made an anatomical gift; and
- 428 (3) be accessible for purposes of paragraphs (1) and (2) 7 days a week on a 24-429 hour basis.
- donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death

- of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.
- (d) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (b) and (c).
- 438 Section 21. RESERVED.
- 439 Section 22. COOPERATION BETWEEN MEDICAL EXAMINER, DISTRICT 440 ATTORNEY, AND PROCUREMENT ORGANIZATION.
- 441 (a) The chief medical examiner and the district attorney shall cooperate with procurement 442 organizations to maximize the opportunity to recover anatomical gifts for the purpose of 443 transplantation, therapy, research, or education.
- 444 (b) The procurement organization authorized to remove an anatomical gift from a donor whose death is under investigation shall remove the donated part from the donor's body after 445 giving notice to the chief medical examiner or district attorney, or their respective designees, 446 447 subject to this section. The chief medical examiner or the district attorney, or their respective 448 designees, shall approve or deny removal of the anatomical gift within a time period to ensure 449 the preservation of the anatomical gift for transplantation. The procurement organization may 450 transport the donor's body for the removal of the anatomical gift consistent with the provisions 451 of this subsection. The chief medical examiner, or his designee, may permit the removal of the 452 anatomical gift at the medical examiner's office. The chief medical examiner or district attorney, 453 or their respective designees, shall be present during the removal of the anatomical gift if in their 454 judgment such attendance would, in the opinion of the chief medical examiner or district

attorney, or their respective designees, facilitate a donation that would otherwise be denied. In that case, the chief medical examiner or district attorney, or their respective designees, may request a biopsy or deny removal of the anatomical gift and shall explain the reasons for determining that those tissues or organs may be involved in the cause of death.

- 459 (c) No medical examiner, physician, procurement organization who acts or attempts to 460 act in good faith in accordance with this section shall be liable for that act in a civil action or 461 criminal proceeding.
- 462 Section 23. FACILITATION OF ANATOMICAL GIFT FROM DECEDENT WHOSE
  463 BODY IS UNDER JURISDICTION OF MEDICAL EXAMINER.
- (a) The chief medical examiner shall release to the procurement organization information necessary to facilitate organ and tissue donation including but not limited to the name, contact information, and available medical and social history of a decedent whose deaths have been reported pursuant to chapter 38. If the decedent's body or part is medically suitable for transplantation or therapy, the medical examiner shall release autopsy reports to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner only as necessary to facilitate transplantation or therapy.
- 472 (b) The medical examiner may conduct a medicolegal examination by reviewing all
  473 medical records, laboratory test results, x-rays, other diagnostic results, and other information
  474 that any person possesses about a donor or prospective donor whose death have been reported
  475 pursuant to chapter 38 which the medical examiner determines may be relevant to the
  476 investigation.

477 (c) A person that has any information requested by a medical examiner pursuant to
478 subsection (b) shall provide that information as expeditiously as possible to allow the medical
479 examiner to conduct the medicolegal investigation within a period compatible with the
480 preservation of parts for the purpose of transplantation, therapy, research, or education.

Section 24. HONORING DONOR DECISION. An individual's decision to make a
donation of that individual's own organ or tissue after death must be honored and shall not
require the consent or concurrence of any individual after the donor's death. In the absence of a
revocation or amendment, health care providers and procurement organizations shall act in
accordance with the donor's decision and may take appropriate actions to effect the anatomical
gift.

Section 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 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 26. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT. 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 3. Chapter 90 of the General Laws is hereby amended by striking out section 8D, as appearing in the 2008 Official Edition, and inserting in place thereof, the following:-

Section 8D. The registrar shall include in every notice of license and registration renewal, including an electronic renewal, sent to a person licensed to operate a motor vehicle under this chapter a document or statement containing a summary description and explanation of the Massachusetts Donor Registry and the anatomical gift act, as provided for in chapter 113A.

The registrar shall affix a suitable symbol to the license of a person who has made an anatomical gift under the provisions of chapter 113A.

The registrar may, on behalf of the commonwealth, accept and use gifts of materials to carry out the provisions of this section, and may, on behalf of a charitable institution, accept gifts, contributions and bequests of funds from individuals, foundations and from federal or other governmental bodies for the purpose of furthering the provisions of chapter 113A and may transmit the same to such institution; may make and sign any agreements and may do and perform any and all acts which may be necessary or desirable to carry out the purposes of this section.

The registrar shall include on any license renewal form, including any electronic renewal form, an option for the person submitting the form to donate a sum of not less than 2 dollars to the Organ and Tissue Donor Registration Fund established in section 35E1/2 of chapter 10. The registrar shall annually report the total amount designated under this paragraph to the state treasurer who shall credit amounts received for that purpose to the fund.

Neither the registrar nor any employee of the commonwealth shall be liable in a suit for damage as a result of his acts or omissions or for any action under the provisions of this section.

The registrar shall provide to federally-designated organ procurement organizations serving the commonwealth access through electronic transmission to names, dates of birth and

other pertinent information of licensed drivers and ID card holders who have registered with the registry of motor vehicles as organ and tissue donors for the sole purpose of identifying those drivers as donors in the Massachusetts Donor Registry pursuant to the applicable provisions of 522 chapter 113A. On any form used by the registry for organ and tissue donation, there shall be a 523 disclaimer notice that informs the donor that certain information shall be provided to federally 524 525 designated organ procurement organizations upon the donor's death.

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The registrar shall include, in the required driver education and training course as provided for in section 8 and in section 13D of chapter 71, an information session on organ and tissue donation. The information session shall include educational materials to be provided by federally-designated organ procurement organizations serving the commonwealth.

The registrar shall make available in all registry branches educational materials as provided by federally-designated organ procurement organizations serving the commonwealth.

532 The registrar shall develop a means by which a person licensed by the registrar to operate 533 a motor vehicle or holding an identification card issued under section 8E to register as an organ 534 and tissue donor through the registry's website. The means shall be in addition to and shall 535 contain the same security provisions as provided for the online renewal of licenses and 536 registrations.