SENATE DOCKET, NO. 1683 FILED ON: 1/21/2011

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*

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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

In the Year Two Thousand Eleven

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 Sections 5A through 13, inclusive of chapter 113 shall be repealed.

SECTION 2. The General Laws are hereby amended by inserting after chapter 113 the following chapter:-

CHAPTER 113A

UNIFORM ANATOMICAL GIFT ACT

Section 1. SHORT TITLE. This act may be cited as the “Uniform Anatomical Gift Act”.

Section 2. DEFINITIONS. In this act:

(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.

18 (5) “Disinterested witness” means a witness other than the spouse, child, parent, sibling,
19 grandchild, grandparent or guardian of the individual who makes, amends, revokes, or refuses to
20 make an anatomical gift, or another adult who exhibited special care and concern for the
21 individual. The term does not include a individual to which an anatomical gift could pass under
22 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.

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

48 (17) “Parent” means a parent whose parental rights have not been terminated.

49 (18) “Part” means an organ, an eye, or tissue of a human being. The term does not
50 include the whole body or a gamete as defined in section 2 of chapter 111L, which shall be
51 donate in accordance with chapter 111L.

52 (19) “Person” means an individual, corporation, business trust, estate, trust, partnership,
53 limited liability company, association, joint venture, public corporation, government or
54 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.

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

63 (23) “Reasonably available” means able to be contacted by a procurement organization
64 without undue effort and willing and able to act in a timely manner consistent with existing
65 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:

73 (A) to execute or adopt a tangible symbol; or

74 (B) to attach to or logically associate with the record an electronic symbol, sound,
75 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;

109 (2) by a will;

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
114 may make a gift by a donor card or other record signed by the donor or other individual making
115 the gift or by authorizing that a statement or symbol indicating that the donor has made an
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
118 donor or other person and must:

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

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
123 identification card upon which an anatomical gift is indicated does not invalidate the gift.

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.

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:

167 (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.

172 (d) Except as otherwise provided in section 8(h), in the absence of an express, contrary
173 indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an
174 anatomical gift of the individual's body or part bars all other persons from making an anatomical
175 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
187 body or part under section 5 or an amendment to an anatomical gift of the donor's body or part

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

190 (d) A revocation of an anatomical gift of a donor's body or part under section 6 by a
191 person other than the donor does not bar another person from making an anatomical gift of the
192 body or part under sections 5 or 10.

193 (e) In the absence of an express, contrary indication by the donor or other person
194 authorized to make an anatomical gift under section 4, an anatomical gift of a part is neither a
195 refusal to give another part nor a limitation on the making of an anatomical gift of another part at
196 a later time by the donor or another person.

197 (f) In the absence of an express, contrary indication by the donor or other individual
198 authorized to make an anatomical gift under section 4, an anatomical gift of a part for one or
199 more of the purposes set forth in section 4 is not a limitation on the making of an anatomical gift
200 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.

223 (b) If there is more than 1 member of a class listed in subsection (a)(1),(3), (4), (5), (6),
224 (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
226 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.

228 (c) An individual may not make an anatomical gift if, at the time of the decedent's death,
229 an individual in a prior class under subsection (a) is reasonably available to make or to object to
230 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
252 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.

277 (e) If an anatomical gift of 1 or more specific parts is made in a document of gift that
278 does not name a person described in subsection (a) and does not identify the purpose of the gift,
279 the gift passes in accordance with subsection (g) and the parts must be used for transplantation or
280 therapy if suitable and if not suitable for those purposes, may be used for research or education.

281 (f) If a document of gift specifies only a general intent to make an anatomical gift by
282 words such as “donor”, “organ donor”, “body donor” or by a symbol or statement of similar
283 import, the gift passes in accordance with subsection (g) and the parts must be used for
284 transplantation or therapy if suitable and if not suitable for those purposes, may be used for
285 research or education.

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

287 (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
307 reasonably believes is dead or near death for a document of gift or other information identifying
308 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.

329 (a) When a hospital refers an individual at or near death to a procurement organization,
330 the organization shall make a reasonable search of the records of the Massachusetts Donor
331 Registry and any other donor registry that it knows exists for the geographical area in which the
332 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.

336 (c) When a hospital refers an individual at or near death to a procurement organization,
337 the organization may conduct any reasonable examination necessary to assess the medical
338 suitability of a part that is or could be the subject of an anatomical gift for transplantation,
339 therapy, research, or education from a donor or a prospective donor. During the examination
340 period, measures necessary to maintain the potential medical suitability of the part may not be
341 withdrawn unless the hospital or procurement organization knows that the individual expressed a
342 contrary intent.

343 (d) Unless prohibited by law other than this act, at any time after a donor's death, the
344 person to which a part passes under section 11 may conduct any reasonable examination
345 necessary to assess the medical suitability of the body or part for its intended purpose.

346 (e) Unless prohibited by law other than this act, an examination under subsection (c) or
347 (d) may include but is not limited to pre and/or postmortem serological and blood and tissue
348 compatibility testing as well as an examination of all medical and dental records of the donor or
349 prospective donor.

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

354 (g) Upon referral by a hospital under subsection (a), a procurement organization shall
355 make a reasonable search for any person listed in section 9 having priority to make an anatomical
356 gift on behalf of a prospective donor. If a procurement organization receives information that an
357 anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the
358 other person of all relevant information.

359 (h) Subject to subsection (i) of section 11 and section 23, the rights of the person to which
360 a part passes under section 11 are superior to the rights of all others with respect to the part. The
361 person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the
362 document of gift and this act, a person that accepts an anatomical gift of an entire body may
363 allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a
364 part, the person to which the part passes under section 11, upon the death of the donor and before
365 embalming, burial, or cremation, shall cause the part to be removed without unnecessary
366 mutilation.

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

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

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

375 SECTION 16. SALE OR PURCHASE OF PARTS PROHIBITED.

376 (a) Except as otherwise provided in subsection (b), a person who for valuable
377 consideration, knowingly purchases or sells a part for transplantation or therapy if removal of
378 such part from an individual is intended to occur after the individual's death shall be punished by
379 imprisonment in the state prison for not more than 5 years or in the house of correction for not
380 more than 2 ½ years, or by a fine of not more than $50,000 or by both such fine and
381 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.

384 Section 17. OTHER PROHIBITED ACTS. A person who, in order to obtain a financial
385 gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an
386 amendment or revocation of a document of gift, or a refusal to make a gift, shall be punished by
387 imprisonment in the state prison for not more than 5 years or in the house of correction for not
388 more than 2 ½ years, or by a fine of not more than $50,000 or by both such fine and
389 imprisonment.

390 Section 18. IMMUNITY.

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,

393 criminal prosecution, or administrative proceeding. Following a donor's designation in a donor
394 registry, signed statement by a donor in an advanced directive or donor card shall be prima facie
395 evidence of good faith.

396 (b) Neither the person making an anatomical gift nor the donor's estate shall be liable for
397 any injury or damage that results from the making or use of the gift.

398 (c) In determining whether an anatomical gift has been made, amended, or revoked under
399 this act, a person may rely upon representations of an individual listed in section 9(a) relating to
400 the individual's relationship to the donor or prospective donor unless the person knows that the
401 representation is untrue.

402 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
408 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.

414 Section 20. DONOR REGISTRY.

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.

422 (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.

430 (c) Personally identifiable information on a donor registry about a donor or prospective
431 donor may not be used or disclosed without the express consent of the donor, prospective donor,
432 or person that made the anatomical gift for any purpose other than to determine, at or near death

433 of the donor or prospective donor, whether the donor or prospective donor has made, amended,
434 or revoked an anatomical gift.

435 (d) This section does not prohibit any person from creating or maintaining a donor
436 registry that is not established by or under contract with the state. Any such registry must comply
437 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
445 whose death is under investigation shall remove the donated part from the donor's body after
446 giving notice to the chief medical examiner or district attorney, or their respective designees,
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

455 attorney, or their respective designees, facilitate a donation that would otherwise be denied. In
456 that case, the chief medical examiner or district attorney, or their respective designees, may
457 request a biopsy or deny removal of the anatomical gift and shall explain the reasons for
458 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.

464 (a) The chief medical examiner shall release to the procurement organization information
465 necessary to facilitate organ and tissue donation including but not limited to the name, contact
466 information, and available medical and social history of a decedent whose deaths have been
467 reported pursuant to chapter 38. If the decedent's body or part is medically suitable for
468 transplantation or therapy, the medical examiner shall release autopsy reports to the procurement
469 organization. The procurement organization may make a subsequent disclosure of the post-
470 mortem examination results or other information received from the medical examiner only as
471 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.

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

487 Section 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In
488 applying and construing this uniform act, consideration must be given to the need to promote
489 uniformity of the law with respect to its subject matter among states that enact it.

490 Section 26. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
491 NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the Electronic
492 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
493 modify, limit or supersede Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize
494 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
495 Section 7003(b).

496 SECTION 3. Chapter 90 of the General Laws is hereby amended by striking out section
497 8D, as appearing in the 2008 Official Edition, and inserting in place thereof, the following:-

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

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

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

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

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

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

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

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

530 The registrar shall make available in all registry branches educational materials as
531 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.