

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/15/07

A Bill

SENATE BILL 798

5 By: Senator Horn
6
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE REVISED ARKANSAS ANATOMICAL
10 GIFT ACT TO PROVIDE A PROGRAM FOR POST-MORTEM
11 DONATIONS OF ALL OR PART OF A HUMAN BODY; AND FOR
12 OTHER PURPOSES.
13

Subtitle

14 *AN ACT TO CREATE THE REVISED ARKANSAS*
15 *ANATOMICAL GIFT ACT TO PROVIDE A PROGRAM*
16 *FOR POST-MORTEM DONATIONS OF ALL OR PART*
17 *OF A HUMAN BODY.*
18
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code Title 20, Chapter 17 is amended to add an
24 additional subchapter to read as follows:

25 20-17-1201. Title.

26 This subchapter shall be known and may be cited as the "Revised
27 Arkansas Anatomical Gift Act."
28

29 20-17-1202. Definitions.

30 In this subchapter:

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

33 (2) "Agent" means an individual:

34 (A) authorized to make health-care decisions on the
35 principal's behalf by a power of attorney for health care; or

36 (B) expressly authorized to make an anatomical gift on the



1 principal's behalf by any other record signed by the principal.

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

5 (4) "Decedent" means a deceased individual whose body or part is
6 or may be the source of an anatomical gift. The term includes a stillborn
7 infant and, subject to restrictions imposed by law other than this
8 subchapter, a fetus.

9 (5) "Disinterested witness" means a witness other than the
10 spouse, child, parent, sibling, grandchild, grandparent, or guardian of the
11 individual who makes, amends, revokes, or refuses to make an anatomical gift,
12 or another adult who exhibited special care and concern for the individual.
13 The term does not include a person to which an anatomical gift could pass
14 under § 20-17-1211.

15 (6) "Document of gift" means a donor card or other record used
16 to make an anatomical gift. The term includes a statement or symbol on a
17 driver's license, identification card, or donor registry.

18 (7) "Donor" means an individual whose body or part is the
19 subject of an anatomical gift.

20 (8) "Donor registry" means a database that contains records of
21 anatomical gifts and amendments to or revocations of anatomical gifts.

22 (9) "Driver's license" means a license or permit issued by the
23 Office of Driver Services to operate a vehicle, whether or not conditions are
24 attached to the license or permit.

25 (10) "Eye bank" means a person that is licensed, accredited, or
26 regulated under federal or state law to engage in the recovery, screening,
27 testing, processing, storage, or distribution of human eyes or portions of
28 human eyes.

29 (11) "Guardian" means a person appointed by a court to make
30 decisions regarding the support, care, education, health, or welfare of an
31 individual. The term does not include a guardian ad litem.

32 (12) "Hospital" means a facility licensed as a hospital under
33 the law of any state or a facility operated as a hospital by the United
34 States, a state, or a subdivision of a state.

35 (13) "Identification card" means an identification card issued
36 by the Office of Driver Services.

1 (14) "Know" means to have actual knowledge.

2 (15) "Minor" means an individual who is under eighteen (18)
3 years of age.

4 (16) "Organ procurement organization" means a person designated
5 by the Secretary of the United States Department of Health and Human Services
6 as an organ procurement organization.

7 (17) "Parent" means a parent whose parental rights have not been
8 terminated.

9 (18) "Part" means an organ, an eye, or tissue of a human being.
10 The term does not include the whole body.

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

15 (20) "Physician" means an individual authorized to practice
16 medicine or osteopathy under the law of any state.

17 (21) "Procurement organization" means an eye bank, organ
18 procurement organization, or tissue bank.

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

23 (23) "Reasonably available" means able to be contacted by a
24 procurement organization without undue effort and willing and able to act in
25 a timely manner consistent with existing medical criteria necessary for the
26 making of an anatomical gift.

27 (24) "Recipient" means an individual into whose body a
28 decedent's part has been or is intended to be transplanted.

29 (25) "Record" means information that is inscribed on a tangible
30 medium or that is stored in an electronic or other medium and is retrievable
31 in perceivable form.

32 (26) "Refusal" means a record created under § 20-17-1207 that
33 expressly states an intent to bar other persons from making an anatomical
34 gift of an individual's body or part.

35 (27) "Sign" means, with the present intent to authenticate or
36 adopt a record:

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

2 (B) to attach to or logically associate with the record an
3 electronic symbol, sound, or process.

4 (28) "State" means a state of the United States, the District of
5 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
6 insular possession subject to the jurisdiction of the United States.

7 (29) "Technician" means an individual determined to be qualified
8 to remove or process parts by an appropriate organization that is licensed,
9 accredited, or regulated under federal or state law. The term includes an
10 enucleator.

11 (30) "Tissue" means a portion of the human body other than an
12 organ or an eye. The term does not include blood unless the blood is donated
13 for the purpose of research or education.

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

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

20

21 20-17-1203. Applicability.

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

24

25 20-17-1204. Who may make anatomical gift before donor's death.

26 Subject to § 20-17-1208, an anatomical gift of a donor's body or part
27 may be made during the life of the donor for the purpose of transplantation,
28 therapy, research, or education in the manner provided in § 20-17-1205 by:

29 (1) the donor, if the donor is an adult or if the donor is a
30 minor and is:

31 (A) emancipated; or

32 (B) authorized under state law to apply for a driver's
33 license because the donor is at least sixteen (16) years of age years of age;

34 (2) an agent of the donor, unless the power of attorney for
35 health care or other record prohibits the agent from making an anatomical
36 gift;

1 (3) a parent of the donor, if the donor is an unemancipated
2 minor; or

3 (4) the donor's guardian.

4
5 20-17-1205. Manner of making anatomical gift before donor's death.

6 (a) A donor may make an anatomical gift:

7 (1) by authorizing a statement or symbol indicating that the
8 donor has made an anatomical gift to be imprinted on the donor's driver's
9 license or identification card;

10 (2) in a will;

11 (3) during a terminal illness or injury of the donor, by any
12 form of communication addressed to at least two adults, at least one of whom
13 is a disinterested witness; or

14 (4) as provided in subsection (b).

15 (b) A donor or other person authorized to make an anatomical gift
16 under § 20-17-1204 may make a gift by a donor card or other record signed by
17 the donor or other person making the gift or by authorizing that a statement
18 or symbol indicating that the donor has made an anatomical gift be included
19 on a donor registry. If the donor or other person is physically unable to
20 sign a record, the record may be signed by another individual at the
21 direction of the donor or other person and must:

22 (1) be witnessed by at least two adults, at least one of whom is
23 a disinterested witness, who have signed at the request of the donor or the
24 other person; and

25 (2) state that it has been signed and witnessed as provided in
26 paragraph (1).

27 (c) Revocation, suspension, expiration, or cancellation of a driver's
28 license or identification card upon which an anatomical gift is indicated
29 does not invalidate the gift.

30 (d) An anatomical gift made by will takes effect upon the donor's
31 death whether or not the will is probated. Invalidation of the will after the
32 donor's death does not invalidate the gift.

33
34 20-17-1206. Amending or revoking anatomical gift before donor's death.

35 (a) Subject to § 20-17-1208, a donor or other person authorized to
36 make an anatomical gift under § 20-17-1204 may amend or revoke an anatomical

1 gift by:

2 (1) a record signed by:

3 (A) the donor;

4 (B) the other person; or

5 (C) subject to subsection (b), another individual acting
6 at the direction of the donor or the other person if the donor or other
7 person is physically unable to sign; or

8 (2) a later-executed document of gift that amends or revokes a
9 previous anatomical gift or portion of an anatomical gift, either expressly
10 or by inconsistency.

11 (b) A record signed pursuant to subsection (a)(1)(C) must:

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

15 (2) state that it has been signed and witnessed as provided in
16 paragraph (1).

17 (c) Subject to § 20-17-1208, a donor or other person authorized to
18 make an anatomical gift under § 20-17-1204 may revoke an anatomical gift by
19 the destruction or cancellation of the document of gift, or the portion of
20 the document of gift used to make the gift, with the intent to revoke the
21 gift.

22 (d) A donor may amend or revoke an anatomical gift that was not made
23 in a will by any form of communication during a terminal illness or injury
24 addressed to at least two adults, at least one of whom is a disinterested
25 witness.

26 (e) A donor who makes an anatomical gift in a will may amend or revoke
27 the gift in the manner provided for amendment or revocation of wills or as
28 provided in subsection (a).

29
30 20-17-1207. Refusal to make anatomical gift – Effect of refusal.

31 (a) An individual may refuse to make an anatomical gift of the
32 individual's body or part by:

33 (1) a record signed by:

34 (A) the individual; or

35 (B) subject to subsection (b), another individual acting
36 at the direction of the individual if the individual is physically unable to

1 sign;

2 (2) the individual's will, whether or not the will is admitted
3 to probate or invalidated after the individual's death; or

4 (3) any form of communication made by the individual during the
5 individual's terminal illness or injury addressed to at least two adults, at
6 least one of whom is a disinterested witness.

7 (b) A record signed pursuant to subsection (a)(1)(B) must:

8 (1) be witnessed by at least two adults, at least one of whom is
9 a disinterested witness, who have signed at the request of the individual;
10 and

11 (2) state that it has been signed and witnessed as provided in
12 paragraph (1).

13 (c) An individual who has made a refusal may amend or revoke the
14 refusal:

15 (1) in the manner provided in subsection (a) for making a
16 refusal;

17 (2) by subsequently making an anatomical gift pursuant to
18 Section 5 that is inconsistent with the refusal; or

19 (3) by destroying or canceling the record evidencing the
20 refusal, or the portion of the record used to make the refusal, with the
21 intent to revoke the refusal.

22 (d) Except as otherwise provided in § 20-17-1208(h), in the absence of
23 an express, contrary indication by the individual set forth in the refusal,
24 an individual's unrevoked refusal to make an anatomical gift of the
25 individual's body or part bars all other persons from making an anatomical
26 gift of the individual's body or part.

27
28 20-17-1208. Preclusive effect of anatomical gift, amendment, or
29 revocation.

30 (a) Except as otherwise provided in subsection (g) and subject to
31 subsection (f), in the absence of an express, contrary indication by the
32 donor, a person other than the donor is barred from making, amending, or
33 revoking an anatomical gift of a donor's body or part if the donor made an
34 anatomical gift of the donor's body or part under § 20-17-1205 or an
35 amendment to an anatomical gift of the donor's body or part under § 20-17-
36 1206.

1 (b) A donor's revocation of an anatomical gift of the donor's body or
2 part under § 20-17-1206 is not a refusal and does not bar another person
3 specified in § 20-17-1204 or § 20-17-1209 from making an anatomical gift of
4 the donor's body or part under § 20-17-1205 or § 20-17-1210.

5 (c) If a person other than the donor makes an unrevoked anatomical
6 gift of the donor's body or part under § 20-17-1205 or an amendment to an
7 anatomical gift of the donor's body or part under § 20-17-1206, another
8 person may not make, amend, or revoke the gift of the donor's body or part
9 under § 20-17-1210.

10 (d) A revocation of an anatomical gift of a donor's body or part under
11 § 20-17-1206 by a person other than the donor does not bar another person
12 from making an anatomical gift of the body or part under § 20-17-1205 or §
13 20-17-1210.

14 (e) In the absence of an express, contrary indication by the donor or
15 other person authorized to make an anatomical gift under § 20-17-1204, an
16 anatomical gift of a part is neither a refusal to give another part nor a
17 limitation on the making of an anatomical gift of another part at a later
18 time by the donor or another person.

19 (f) In the absence of an express, contrary indication by the donor or
20 other person authorized to make an anatomical gift under § 20-17-1204, an
21 anatomical gift of a part for one or more of the purposes set forth in § 20-
22 17-1204 is not a limitation on the making of an anatomical gift of the part
23 for any of the other purposes by the donor or any other person under § 20-17-
24 1205 or § 20-17-1210.

25 (g) If a donor who is an unemancipated minor dies, a parent of the
26 donor who is reasonably available may revoke or amend an anatomical gift of
27 the donor's body or part.

28 (h) If an unemancipated minor who signed a refusal dies, a parent of
29 the minor who is reasonably available may revoke the minor's refusal.

30
31 20-17-1209. Who may make anatomical gift of decedent's body or part.

32 (a) Subject to subsections (b) and (c) and unless barred by § 20-17-
33 1207 or § 20-17-1208, an anatomical gift of a decedent's body or part for
34 purpose of transplantation, therapy, research, or education may be made by
35 any member of the following classes of persons who is reasonably available,
36 in the order of priority listed:

1 (1) an agent of the decedent at the time of death who could have
2 made an anatomical gift under § 20-17-1204(2) immediately before the
3 decedent's death;

4 (2) the spouse of the decedent;

5 (3) adult children of the decedent;

6 (4) parents of the decedent;

7 (5) adult siblings of the decedent;

8 (6) adult grandchildren of the decedent;

9 (7) grandparents of the decedent;

10 (8) an adult who exhibited special care and concern for the
11 decedent;

12 (9) the persons who were acting as the guardians of the person
13 of the decedent at the time of death; and

14 (10) any other person having the authority to dispose of the
15 decedent's body.

16 (b) If there is more than one member of a class listed in subsection
17 (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift,
18 an anatomical gift may be made by a member of the class unless that member or
19 a person to which the gift may pass under § 20-17-1211 knows of an objection
20 by another member of the class. If an objection is known, the gift may be
21 made only by a majority of the members of the class who are reasonably
22 available.

23 (c) A person may not make an anatomical gift if, at the time of the
24 decedent's death, a person in a prior class under subsection (a) is
25 reasonably available to make or to object to the making of an anatomical
26 gift.

27
28 20-17-1210. Manner of making, amending, or revoking anatomical gift of
29 decedent's body or part.

30 (a) A person authorized to make an anatomical gift under § 20-17-1209
31 may make an anatomical gift by a document of gift signed by the person making
32 the gift or by that person's oral communication that is electronically
33 recorded or is contemporaneously reduced to a record and signed by the
34 individual receiving the oral communication.

35 (b) Subject to subsection (c), an anatomical gift by a person
36 authorized under § 20-17-1209 may be amended or revoked orally or in a record

1 by any member of a prior class who is reasonably available. If more than one
2 member of the prior class is reasonably available, the gift made by a person
3 authorized under § 20-17-1209 may be:

4 (1) amended only if a majority of the reasonably available
5 members agree to the amending of the gift; or

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

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

14
15 20-17-1211. Persons that may receive anatomical gift – Purpose of
16 anatomical gift.

17 (a) An anatomical gift may be made to the following persons named in
18 the document of gift:

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

22 (2) subject to subsection (b), an individual designated by the
23 person making the anatomical gift if the individual is the recipient of the
24 part;

25 (3) an eye bank or tissue bank.

26 (b) If an anatomical gift to an individual under subsection (a)(2)
27 cannot be transplanted into the individual, the part passes in accordance
28 with subsection (g) in the absence of an express, contrary indication by the
29 person making the anatomical gift.

30 (c) If an anatomical gift of one or more specific parts or of all
31 parts is made in a document of gift that does not name a person described in
32 subsection (a) but identifies the purpose for which an anatomical gift may be
33 used, the following rules apply:

34 (1) If the part is an eye and the gift is for the purpose of
35 transplantation or therapy, the gift passes to the appropriate eye bank.

36 (2) If the part is tissue and the gift is for the purpose of

1 transplantation or therapy, the gift passes to the appropriate tissue bank.

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

5 (4) If the part is an organ, an eye, or tissue and the gift is
6 for the purpose of research or education, the gift passes to the appropriate
7 procurement organization.

8 (d) For the purpose of subsection (c), if there is more than one
9 purpose of an anatomical gift set forth in the document of gift but the
10 purposes are not set forth in any priority, the gift must be used for
11 transplantation or therapy, if suitable. If the gift cannot be used for
12 transplantation or therapy, the gift may be used for research or education.

13 (e) If an anatomical gift of one or more specific parts is made in a
14 document of gift that does not name a person described in subsection (a) and
15 does not identify the purpose of the gift, the gift may be used only for
16 transplantation or therapy, and the gift passes in accordance with subsection
17 (g).

18 (f) If a document of gift specifies only a general intent to make an
19 anatomical gift by words such as "donor", "organ donor", or "body donor", or
20 by a symbol or statement of similar import, the gift may be used only for
21 transplantation or therapy, and the gift passes in accordance with subsection
22 (g).

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

25 (1) If the part is an eye, the gift passes to the appropriate
26 eye bank.

27 (2) If the part is tissue, the gift passes to the appropriate
28 tissue bank.

29 (3) If the part is an organ, the gift passes to the appropriate
30 organ procurement organization as custodian of the organ.

31 (h) An anatomical gift of an organ for transplantation or therapy,
32 other than an anatomical gift under subsection (a)(2), passes to the organ
33 procurement organization as custodian of the organ.

34 (i) If an anatomical gift does not pass pursuant to subsections (a)
35 through (h) or the decedent's body or part is not used for transplantation,
36 therapy, research, or education, custody of the body or part passes to the

1 person under obligation to dispose of the body or part.

2 (j) A person may not accept an anatomical gift if the person knows
3 that the gift was not effectively made under § 20-17-1205 or § 20-17-1210 or
4 if the person knows that the decedent made a refusal under § 20-17-1207 that
5 was not revoked. For purposes of the subsection, if a person knows that an
6 anatomical gift was made on a document of gift, the person is deemed to know
7 of any amendment or revocation of the gift or any refusal to make an
8 anatomical gift on the same document of gift.

9 (k) Except as otherwise provided in subsection (a)(2), nothing in this
10 subchapter affects the allocation of organs for transplantation or therapy.

11
12 20-17-1212. Search and notification.

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

17 (1) a law enforcement officer, firefighter, paramedic, or other
18 emergency rescuer finding the individual; and

19 (2) if no other source of the information is immediately
20 available, a hospital, as soon as practical after the individual's arrival at
21 the hospital.

22 (b) If a document of gift or a refusal to make an anatomical gift is
23 located by the search required by subsection (a)(1) and the individual or
24 deceased individual to whom it relates is taken to a hospital, the person
25 responsible for conducting the search shall send the document of gift or
26 refusal to the hospital.

27 (c) A person is not subject to criminal or civil liability for failing
28 to discharge the duties imposed by this section but may be subject to
29 administrative sanctions.

30
31 20-17-1213. Delivery of document of gift not required --Right to
32 examine.

33 (a) A document of gift need not be delivered during the donor's
34 lifetime to be effective.

35 (b) Upon or after an individual's death, a person in possession of a
36 document of gift or a refusal to make an anatomical gift with respect to the

1 individual shall allow examination and copying of the document of gift or
2 refusal by a person authorized to make or object to the making of an
3 anatomical gift with respect to the individual or by a person to which the
4 gift could pass under § 20-17-1211.

5
6 20-17-1214. Rights and duties of procurement organization and others.

7 (a) When a hospital refers an individual at or near death to a
8 procurement organization, the organization shall make a reasonable search of
9 the records of the Office of Driver Services and any donor registry that it
10 knows exists for the geographical area in which the individual resides to
11 ascertain whether the individual has made an anatomical gift.

12 (b) A procurement organization must be allowed reasonable access to
13 information in the records of the Office of Driver Services to ascertain
14 whether an individual at or near death is a donor.

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

23 (d) Unless prohibited by law other than this subchapter, at any time
24 after a donor's death, the person to which a part passes under § 20-17-1211
25 may conduct any reasonable examination necessary to ensure the medical
26 suitability of the body or part for its intended purpose.

27 (e) Unless prohibited by law other than this subchapter, an
28 examination under subsection (c) or (d) may include an examination of all
29 medical and dental records of the donor or prospective donor.

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

35 (g) Upon referral by a hospital under subsection (a), a procurement
36 organization shall make a reasonable search for any person listed in § 20-17-

1 1209 having priority to make an anatomical gift on behalf of a prospective
2 donor. If a procurement organization receives information that an anatomical
3 gift to any other person was made, amended, or revoked, it shall promptly
4 advise the other person of all relevant information.

5 (h) Subject to § 20-17-1211(i) and § 20-17-1222, the rights of the
6 person to which a part passes under § 20-17-1211 are superior to the rights
7 of all others with respect to the part. The person may accept or reject an
8 anatomical gift in whole or in part. Subject to the terms of the document of
9 gift and this subchapter, a person that accepts an anatomical gift of an
10 entire body may allow embalming, burial or cremation, and use of remains in a
11 funeral service. If the gift is of a part, the person to which the part
12 passes under § 20-17-1211, upon the death of the donor and before embalming,
13 burial, or cremation, shall cause the part to be removed without unnecessary
14 mutilation.

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

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

20
21 20-17-1215. Coordination of procurement and use.

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

25
26 20-17-1216. Sale or purchase of parts prohibited.

27 (a) Except as otherwise provided in subsection (b), a person that for
28 valuable consideration, knowingly purchases or sells a part for
29 transplantation or therapy if removal of a part from an individual is
30 intended to occur after the individual's death commits an unclassified felony
31 and upon conviction is subject to a fine not exceeding fifty thousand dollars
32 (\$50,000) or imprisonment not exceeding five (5) years, or both.

33 (b) A person may charge a reasonable amount for the removal,
34 processing, preservation, quality control, storage, transportation,
35 implantation, or disposal of a part.

36

1 20-17-1217. Other prohibited acts.

2 A person that, in order to obtain a financial gain, intentionally
3 falsifies, forges, conceals, defaces, or obliterates a document of gift, an
4 amendment or revocation of a document of gift, or a refusal commits an
5 unclassified felony and upon conviction is subject to a fine not exceeding
6 fifty thousand dollars (\$50,000) or imprisonment not exceeding five (5)
7 years, or both.

8
9 20-17-1218. Immunity.

10 (a) A person that acts in accordance with this subchapter or with the
11 applicable anatomical gift law of another state, or attempts in good faith to
12 do so, is not liable for the act in a civil action, criminal prosecution, or
13 administrative proceeding.

14 (b) Neither the person making an anatomical gift nor the donor's
15 estate is liable for any injury or damage that results from the making or use
16 of the gift.

17 (c) In determining whether an anatomical gift has been made, amended,
18 or revoked under this subchapter, a person may rely upon representations of
19 an individual listed in § 20-17-1209(a)(2), (3), (4), (5), (6), (7), or (8)
20 relating to the individual's relationship to the donor or prospective donor
21 unless the person knows that the representation is untrue.

22
23 20-17-1219. Law governing validity – Choice of law as to execution of
24 document of gift – Presumption of validity.

25 (a) A document of gift is valid if executed in accordance with:

26 (1) this subchapter;

27 (2) the laws of the state or country where it was executed; or

28 (3) the laws of the state or country where the person making the
29 anatomical gift was domiciled, has a place of residence, or was a national at
30 the time the document of gift was executed.

31 (b) If a document of gift is valid under this section, the law of this
32 state governs the interpretation of the document of gift.

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

36

1 20-17-1220. Effect of anatomical gift on advance health-care
2 directive.

3 (a) In this section:

4 (1) "Advance health-care directive" means a power of attorney
5 for health care or a record signed by a prospective donor containing the
6 prospective donor's direction concerning a health-care decision for the
7 prospective donor.

8 (2) "Declaration" means a record signed by a prospective donor
9 specifying the circumstances under which a life support system may be
10 withheld or withdrawn from the prospective donor.

11 (3) "Health-care decision" means any decision made regarding the
12 health care of the prospective donor.

13 (b) If a prospective donor has a declaration or advance health-care
14 directive, measures necessary to ensure the medical suitability of an organ
15 for transplantation or therapy may not be withheld or withdrawn from the
16 prospective donor, unless the declaration expressly provides to the contrary.

17
18 20-17-1221. Cooperation between a coroner or the state medical
19 examiner and a procurement organization.

20 (a) A coroner and the state medical examiner shall cooperate with
21 procurement organizations to maximize the opportunity to recover anatomical
22 gifts for the purpose of transplantation, therapy, research, or education.

23 (b) If a coroner or the state medical examiner receives notice from a
24 procurement organization that an anatomical gift might be available or was
25 made with respect to a decedent whose body is under the jurisdiction of the
26 coroner or the state medical examiner and a post-mortem examination is going
27 to be performed, unless the state medical examiner denies recovery in
28 accordance with § 20-17-1222, the state medical examiner or designee shall
29 conduct a post-mortem examination of the body or the part in a manner and
30 within a period compatible with its preservation for the purposes of the
31 gift.

32 (c) A part may not be removed from the body of a decedent under the
33 jurisdiction of a coroner or the state medical examiner for transplantation,
34 therapy, research, or education unless the part is the subject of an
35 anatomical gift. The body of a decedent under the jurisdiction of the coroner
36 or the state medical examiner may not be delivered to a person for research

1 or education unless the body is the subject of an anatomical gift. This
2 subsection does not preclude a coroner or the state medical examiner from
3 performing the medicolegal investigation upon the body or parts of a decedent
4 under the jurisdiction of the coroner or the state medical examiner.

5
6 20-17-1222. Facilitation of anatomical gift from decedent whose body
7 is under jurisdiction of coroner or the state medical examiner.

8 (a) Upon request of a procurement organization, a coroner or the state
9 medical examiner shall release to the procurement organization the name,
10 contact information, and available medical and social history of a decedent
11 whose body is under the jurisdiction of the coroner or the state medical
12 examiner. If the decedent's body or part is medically suitable for
13 transplantation, therapy, research, or education, the coroner or the state
14 medical examiner shall release post-mortem examination results to the
15 procurement organization. The procurement organization may make a subsequent
16 disclosure of the post-mortem examination results or other information
17 received from the coroner or the state medical examiner only if relevant to
18 transplantation or therapy.

19 (b) The coroner or the state medical examiner may conduct a
20 medicolegal examination by reviewing all medical records, laboratory test
21 results, x-rays, other diagnostic results, and other information that any
22 person possesses about a donor or prospective donor whose body is under the
23 jurisdiction of the coroner or the state medical examiner which the coroner
24 or the state medical examiner determines may be relevant to the
25 investigation.

26 (c) A person that has any information requested by a coroner or the
27 state medical examiner pursuant to subsection (b) shall provide that
28 information as expeditiously as possible to allow the coroner or the state
29 medical examiner to conduct the medicolegal investigation within a period
30 compatible with the preservation of parts for the purpose of transplantation,
31 therapy, research, or education.

32 (d) If an anatomical gift has been or might be made of a part of a
33 decedent whose body is under the jurisdiction of the coroner or after a post-
34 mortem examination the coroner determines that no autopsy is required, or ,
35 if the decedent has been referred to the state medical examiner for post-
36 mortem examination under § 12-12-318 and the state medical examiner

1 determines that an autopsy is required, after consultation with the
2 prosecuting attorney and the coroner, and it is determined that the recovery
3 of the parts that are the subject of an anatomical gift will not interfere
4 with the autopsy, the coroner, state medical examiner, and procurement
5 organization shall cooperate in the timely removal of the part from the
6 decedent for the purpose of transplantation, therapy, research, or education.

7 (e) If an anatomical gift of a part from the decedent under the
8 jurisdiction of the coroner or the state medical examiner has been or might
9 be made, and after consultation with the coroner and prosecuting attorney,
10 the state medical examiner believes the recovery of the part could interfere
11 with determination of the decedent's cause and manner of death, the state
12 medical examiner shall consult with the procurement organization or physician
13 or technician designated by the procurement organization about the proposed
14 recovery. The procurement organization shall provide the state medical
15 examiner with all information that the procurement organization has that
16 could relate to the cause or manner of the decedent's death. After
17 consultation with the prosecuting attorney and coroner, the state medical
18 examiner may allow the recovery.

19 (f) The coroner, prosecuting attorney, medical examiner, and a
20 procurement organization shall enter into an agreement establishing protocols
21 and procedures governing the relations between them when an anatomical gift
22 of a part from a decedent whose body is under the jurisdiction of the coroner
23 or medical examiner has been or might be made but the coroner or medical
24 examiner believes that the recovery of the part could interfere with the
25 post-mortem investigation into the decedent's cause or manner of death.
26 Decisions regarding the recovery of the part from the decedent shall be made
27 in accordance with the agreement. The coroner, prosecuting attorney, medical
28 examiner, and the procurement organization shall evaluate the effectiveness
29 of the agreement at regular intervals but no less frequently than every two
30 years.

31 (g) In the absence of an agreement establishing protocols and
32 procedures governing the relations between the state medical examiner and a
33 procurement organization, if the state medical examiner intends to deny
34 recovery of an organ for transplantation or therapy, the state medical
35 examiner or designee, at the request of the procurement organization, shall
36 attend the removal procedure for the organ before making a final

1 determination not to allow the procurement organization to recover the organ.
2 During the removal procedure, the state medical examiner or designee may
3 allow recovery by the procurement organization to proceed, or, if the state
4 medical examiner or designee believes that the organ may be involved in
5 determining the decedent's cause or manner of death, deny recovery by the
6 procurement organization.

7 (h) If the procurement organization seeks to recover only an eye or
8 tissue or both, the medical examiner or designee shall not be required to
9 attend a removal procedure as provided in subsection (g).

10 (i) If the state medical examiner or designee denies recovery under
11 subsection (g), the individual denying recovery shall:

12 (1) explain in a record the specific reasons for not allowing
13 recovery of the part;

14 (2) include the specific reasons in the records of the state
15 medical examiner; and

16 (3) provide a record with the specific reasons to the
17 procurement organization.

18 (j) If the coroner or the state medical examiner or designee allows
19 recovery of a part, the procurement organization will cooperate with the
20 coroner and medical examiner in any documentation of injuries and the
21 preservation and collection of evidence prior to and during the recovery of
22 the part; and, upon request, shall cause the physician or technician who
23 removes the part to provide the coroner and medical examiner with a record
24 describing the condition of the part, a biopsy, a photograph, and any other
25 information and observations that would assist in the post-mortem
26 examination.

27 (k) If the state medical examiner or designee is required to be
28 present at a removal procedure under subsection (g), upon request the
29 procurement organization requesting the recovery of the organ shall reimburse
30 the state medical examiner or designee for the additional costs incurred in
31 complying with subsection (g).

32
33 20-17-1223. Relation to electronic signatures in Global And National
34 Commerce Act.

35 This act modifies, limits, and supersedes the Electronic Signatures in
36 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does

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

4
5 SECTION 2. Arkansas Code § 17-29-701 is amended to read as follows:
6 17-29-701. Authority.

7 A funeral director or embalmer licensed pursuant to § 17-29-301 et seq.
8 who has completed a course in eye enucleation and has received a certificate
9 of competence from the Department of Ophthalmology of the University of
10 Arkansas for Medical Sciences' College of Medicine may enucleate the eyes of
11 a deceased person pursuant to a disposition or gift thereof by the decedent
12 or another person in the manner prescribed in ~~§ 20-17-601 et seq.~~ Revised
13 Arkansas Anatomical Gift Act, § 20-17-1201 et seq., after proper
14 certification of death by a physician.

15
16 SECTION 3. Arkansas Code § 12-12-325 is repealed.

17 ~~12-12-325. Autopsies—Anatomical gifts.~~

18 ~~(a) Upon a request from an entity authorized under the Arkansas~~
19 ~~Anatomical Gift Act, § 20-17-601 et seq., the coroner and his or her~~
20 ~~assistants may allow any or all parts of a human body to be removed and~~
21 ~~donated in accordance with the procedures set forth in the Arkansas~~
22 ~~Anatomical Gift Act, § 20-17-601 et seq.~~

23 ~~(b) If no autopsy is required, the part or parts to be donated shall~~
24 ~~be released in accordance with the procedures set forth in the Arkansas~~
25 ~~Anatomical Gift Act, § 20-17-601 et seq.~~

26 ~~(c)(1) If an autopsy is required under § 12-12-318 and the coroner~~
27 ~~determines that the removal of the part or parts will not interfere with the~~
28 ~~subsequent course of an investigation or autopsy, the part or parts shall be~~
29 ~~released in accordance with the Arkansas Anatomical Gift Act, § 20-17-601 et~~
30 ~~seq.~~

31 ~~(2) The autopsy shall be performed in a timely manner following~~
32 ~~the removal of the part or parts.~~

33 ~~(d)(1) If the coroner is considering withholding one (1) or more parts~~
34 ~~of a potential donor for any reason, the coroner shall consult with the chief~~
35 ~~medical examiner or his or her designee.~~

36 ~~(2) If after consulting with the chief medical examiner or his~~

1 ~~or her designee, the coroner denies removal of the part or parts, the coroner~~
2 ~~shall explain in writing the reasons for the denial and shall be present~~
3 ~~during the removal of the part or parts.~~

4 ~~(e) At the request of the coroner, or in the case in which the autopsy~~
5 ~~is performed by someone other than the coroner, a document shall be filed~~
6 ~~with the coroner detailing the condition of the part or parts removed and the~~
7 ~~relationship, if any, to the cause of death.~~

8
9 SECTION 4. Arkansas Code § 20-17-102(g), the Arkansas Final Disposition
10 Rights Act, is amended to read as follows:

11 (g) Nothing in this section shall be construed to affect, repeal, or
12 replace the provisions and procedures set forth in the ~~Arkansas Anatomical~~
13 ~~Gift Act, § 20-17-601 et seq~~ Revised Arkansas Anatomical Gift Act, § 20-17-
14 1201 et seq.

15
16 SECTION 5. Arkansas Code § 20-17-501 is repealed.

17 ~~20-17-501. Organ donation—Driver's license form to contain statement~~
18 ~~of intent.~~

19 ~~(a)(1) At the time that a person applies for the issuance or renewal~~
20 ~~of a driver's license, a question as to whether he or she wishes to donate~~
21 ~~his or her bodily organs shall be set out in the application, and the~~
22 ~~response shall be noted on the driver's license, clearly indicating the~~
23 ~~licensee's intent either to donate or not to donate his or her bodily organs.~~

24 ~~(2) If the applicant decides to donate his or her bodily organs,~~
25 ~~and if it is so noted on the driver's license, all of the legal requirements~~
26 ~~for consenting to the donation of organs and tissues shall be deemed to have~~
27 ~~been met.~~

28 ~~(3) If the applicant does not respond to the question regarding~~
29 ~~the donation of his or her bodily organs, then the applicant is deemed not to~~
30 ~~have given consent for the donation of bodily organs.~~

31 ~~(b) Notwithstanding that a driver has given consent on his or her~~
32 ~~driver's license that he or she is willing to make an anatomical gift, that~~
33 ~~person's organs and tissue shall not be donated under this section if a~~
34 ~~family member or guardian identified in § 20-17-603(a) notifies the person or~~
35 ~~persons responsible for procuring the organs and tissue that the family~~
36 ~~member or guardian desires that the organs and tissue not be donated.~~

1
2 SECTION 6. Arkansas Code §§ 20-17-601 – 20-17-613 are repealed.

3 ~~20-17-601. Definitions.~~

4 ~~As used in this subchapter:~~

5 (1) ~~"Anatomical gift" means a donation of all or part of a human~~
6 ~~body to take effect upon or after death;~~

7 (2) ~~"Decedent" means a deceased individual and includes a~~
8 ~~stillborn infant or fetus;~~

9 (3) ~~"Document of gift" means a card, a statement attached to or~~
10 ~~imprinted on a motor vehicle operator's or chauffeur's license, a will, or~~
11 ~~other writing used to make an anatomical gift;~~

12 (4) ~~"Donor" means an individual who makes an anatomical gift of~~
13 ~~all or part of the individual's body;~~

14 (5) ~~"Enucleator" means an individual who is certified by the~~
15 ~~Department of Ophthalmology of the University of Arkansas for Medical~~
16 ~~Sciences to remove or process eyes or parts of eyes;~~

17 (6) ~~"Hospital" means a facility licensed, accredited, or~~
18 ~~approved as a hospital under the law of any state or a facility operated as a~~
19 ~~hospital by the United States government, a state, or a subdivision of a~~
20 ~~state;~~

21 (7) ~~"Part" means an organ, tissue, eye, bone, artery, blood,~~
22 ~~fluid, or other portion of a human body;~~

23 (8) ~~"Person" means an individual, corporation, business trust,~~
24 ~~estate, trust, partnership, joint venture, association, government,~~
25 ~~governmental subdivision or agency, or any other legal or commercial entity;~~

26 (9) ~~"Physician" or "surgeon" means an individual licensed or~~
27 ~~otherwise authorized to practice medicine and surgery or osteopathy and~~
28 ~~surgery under the laws of any state;~~

29 (10) ~~"Procurement organization" means a person licensed,~~
30 ~~accredited, or approved under the laws of any state for procurement,~~
31 ~~distribution, or storage of human bodies or parts;~~

32 (11) ~~"State" means a state, territory, or possession of the~~
33 ~~United States, the District of Columbia, or the Commonwealth of Puerto Rico;~~

34 (12) ~~"Technician" means any person, who is not a physician or~~
35 ~~surgeon, who is acting under the direction or supervision of a physician,~~
36 ~~surgeon, or hospital to remove or process a part.~~

1
2 ~~20-17-602. Making, amending, revoking, and refusing to make anatomical~~
3 ~~gifts by individual.~~

4 ~~(a) An individual who is at least eighteen (18) years of age may:~~

5 ~~(i) Make an anatomical gift for any of the purposes~~
6 ~~stated in § 20-17-606(a);~~

7 ~~(ii) Limit an anatomical gift to one or more of~~
8 ~~those purposes; or~~

9 ~~(iii) Refuse to make an anatomical gift.~~

10 ~~(b) An anatomical gift may be made only by a document of gift signed~~
11 ~~by the donor. If the donor cannot sign, the document of gift must be signed~~
12 ~~by another individual and by two (2) witnesses, all of whom have signed at~~
13 ~~the direction and in the presence of the donor and of each other, and state~~
14 ~~that it has been so signed.~~

15 ~~(c) If a document of gift is attached to or imprinted on a donor's~~
16 ~~motor vehicle operator's or chauffeur's license, the document of gift must~~
17 ~~comply with subsection (b) of this section. Revocation, suspension,~~
18 ~~expiration, or cancellation of the license does not invalidate the anatomical~~
19 ~~gift.~~

20 ~~(d) A document of gift may designate a particular physician or surgeon~~
21 ~~to carry out the appropriate procedures. In the absence of a designation or~~
22 ~~if the designee is not available, the donee or other person authorized to~~
23 ~~accept the anatomical gift may employ or authorize any physician, surgeon,~~
24 ~~technician, or enucleator to carry out the appropriate procedures.~~

25 ~~(e) An anatomical gift by will takes effect upon death of the~~
26 ~~testator, whether or not the will is probated. If, after death, the will is~~
27 ~~declared invalid for testamentary purposes, the validity of the anatomical~~
28 ~~gift is unaffected.~~

29 ~~(f) A donor may amend or revoke an anatomical gift, not made by will,~~
30 ~~only by:~~

31 ~~(1) A signed statement;~~

32 ~~(2) An oral statement made in the presence of two (2)~~
33 ~~individuals;~~

34 ~~(3) Any form of communication during a terminal illness or~~
35 ~~injury addressed to a physician or surgeon; or~~

36 ~~(4) The delivery of a signed statement to a specified donee to~~

1 ~~whom a document of gift had been delivered.~~

2 ~~(g) The donor of an anatomical gift made by will may amend or revoke~~
3 ~~the gift in the manner provided for amendment or revocation of wills, or as~~
4 ~~provided in subsection (f) of this section.~~

5 ~~(h) An anatomical gift that is not revoked by the donor before death~~
6 ~~is irrevocable and does not require the consent or concurrence of any person~~
7 ~~after the donor's death. However, if a person listed in § 20-17-603(a) knows~~
8 ~~of a contrary indication by the donor that the gift be revoked and makes such~~
9 ~~indication known to a representative of the organ procurement agency created,~~
10 ~~organized, and existing under the laws of the State of Arkansas, then the~~
11 ~~gift will only be effective upon the consent of a person listed in § 20-17-~~
12 ~~603(a).~~

13 ~~(i) An individual may refuse to make an anatomical gift of the~~
14 ~~individual's body or part by:~~

15 ~~(i) Writing signed in the same manner as a document~~
16 ~~of gift;~~

17 ~~(ii) A statement attached to or imprinted on a~~
18 ~~donor's motor vehicle operator's or chauffeur's license; or~~

19 ~~(iii) Any other writing used to identify the~~
20 ~~individual as refusing to make an anatomical gift. During a terminal illness~~
21 ~~or injury, the refusal may be an oral statement or other form of~~
22 ~~communication.~~

23 ~~(j) In the absence of contrary indications by the donor, an anatomical~~
24 ~~gift of a part is neither a refusal to give other parts nor a limitation on~~
25 ~~an anatomical gift under § 20-17-603 or on a removal or release of other~~
26 ~~parts under § 20-17-604.~~

27 ~~(k) In the absence of contrary indications by the donor, a revocation~~
28 ~~or amendment of an anatomical gift is not a refusal to make another~~
29 ~~anatomical gift. If the donor intends a revocation to be a refusal to make an~~
30 ~~anatomical gift, the donor shall make the refusal pursuant to subsection (i)~~
31 ~~of this section.~~

32 ~~(l) The Office of Driver Services shall provide on the reverse side of~~
33 ~~each operator's or chauffeur's license issued a statement whereby the owner~~
34 ~~of the license may certify his willingness to make an anatomical gift under~~
35 ~~this subchapter.~~

36 ~~(m) A document of gift may, but is not required to be, in the~~

1 following form:

2

3 ANATOMICAL GIFT BY A LIVING DONOR

4

5 Pursuant to the Anatomical Gift Act, § 20-17-601 et seq., upon my death, I
6 hereby give (check boxes applicable):

7

8 1. Any needed organs, tissues, or parts;

9

10 2. The following organs, tissues, or parts only _____;

11

12 3. For the following purposes only

13

14

15 _____

16 _____

17 (transplant therapy research education)

18

19 _____

20 _____

21

22 _____ Date of Birth _____ Signature of Donor

23

24 _____

25 _____

26

27 _____ Date Signed _____ Address of Donor

28

29 20-17-603. Making, revoking, and objecting to anatomical gifts by
30 others.

31 (a) Any member of the following classes of persons, in the order or
32 priority listed, may make an anatomical gift of all or a part of the
33 decedent's body for an authorized purpose, unless the decedent, at the time
34 of death, has made an unrevoked refusal to make that anatomical gift:

35 (1) The spouse of the decedent;

36 (2) An adult son or daughter of the decedent;

1 ~~(3) Either parent of the decedent;~~
2 ~~(4) An adult brother or sister of the decedent;~~
3 ~~(5) A grandparent of the decedent; and~~
4 ~~(6) A guardian of the person of the decedent at the time of~~
5 ~~death.~~

6 ~~(b) An anatomical gift may not be made by a person listed in~~
7 ~~subsection (a) of this section if:~~

8 ~~(1) A person in a prior class is available at the time of death~~
9 ~~to make an anatomical gift;~~

10 ~~(2) The person proposing to make an anatomical gift knows of a~~
11 ~~refusal or contrary indications by the decedent; or~~

12 ~~(3) The person proposing to make an anatomical gift knows of an~~
13 ~~objection to making an anatomical gift by a member of the person's class or a~~
14 ~~prior class.~~

15 ~~(c) An anatomical gift by a person authorized under subsection (a) of~~
16 ~~this section must be made by:~~

17 ~~(1) A document of gift signed by the person;~~

18 ~~(2) The person's telegraphic, recorded telephonic, or other~~
19 ~~recorded message; or~~

20 ~~(3) A telephonic message witnessed by at least two (2) persons,~~
21 ~~in which case the witnesses shall document the telephonic message in writing.~~

22 ~~(d) An anatomical gift by a person authorized under subsection (a) of~~
23 ~~this section may be revoked by any member of the same or a prior class if,~~
24 ~~before procedures have begun for the removal of a part from the body of the~~
25 ~~decedent, the physician, surgeon, technician, or enucleator removing the part~~
26 ~~knows of the revocation.~~

27 ~~(e) A failure to make an anatomical gift under subsection (a) of this~~
28 ~~section is not an objection to the making of an anatomical gift.~~

29
30 ~~20-17-604. Authorization by coroner or hospital administrator.~~

31 ~~(a) The coroner or hospital administrator may release and permit the~~
32 ~~removal of a part from a body within that coroner's or administrator's~~
33 ~~eustody, for transplantation or therapy, if:~~

34 ~~(1) The official or administrator has received a request for the~~
35 ~~part from a hospital, physician, surgeon, or procurement organization;~~

36 ~~(2) The official or administrator has made a reasonable effort,~~

1 taking into account the useful life of the part, to locate and examine the
2 decedent's medical records and inform persons listed in § 20-17-603(a) of
3 their option to make, or object to making, an anatomical gift;

4 (3) The official or administrator does not know of a refusal or
5 contrary indication by the decedent or objection by a person having priority
6 to act as listed in § 20-17-603(a);

7 (4) The removal will be by a physician, surgeon, or technician;
8 but in the case of eyes, by one of them or by an enucleator;

9 (5) The removal will not interfere with any autopsy or
10 investigation;

11 (6) The removal will be in accordance with accepted medical
12 standards; and

13 (7) Cosmetic restoration will be done, if appropriate.

14 (b) A coroner or hospital administrator releasing and permitting the
15 removal of a part shall maintain a permanent record of the name of the
16 decedent, the person making the request, the date and purpose of the request,
17 the part requested, and the person to whom it was released.

18
19 ~~20-17-605. Required request—Search and notification.~~

20 (a) If, at or near the time of death of a patient, there is no medical
21 record that the patient has made or refused to make an anatomical gift, the
22 hospital administrator or a representative designated by the administrator or
23 the attending physician shall discuss the option to make or refuse to make an
24 anatomical gift and request the making of an anatomical gift pursuant to §
25 20-17-603(a). The request must be made with reasonable discretion and
26 sensitivity to the circumstances of the family. A request is not required if
27 the gift is not suitable, based upon accepted medical standards, for a
28 purpose specified in § 20-17-606. An entry must be made in the medical record
29 of the patient, stating the name and affiliation of the individual making the
30 request, and of the name, response, and relationship to the patient of the
31 person to whom the request was made.

32 (b) The following persons shall make a reasonable search for a
33 document of gift or other information identifying the bearer as a donor or as
34 an individual who has refused to make an anatomical gift:

35 (1) A law enforcement officer, fireman, paramedic, or other
36 emergency rescuer finding an individual who the searcher believes is dead or

1 near death; and

2 (2) ~~A hospital, upon the admission of an individual at or near~~
3 ~~the time of death, if there is not immediately available any other source of~~
4 ~~that information.~~

5 (c) ~~If a document of gift or evidence of refusal to make an anatomical~~
6 ~~gift is located by the search required by subsection (b)(1) of this section,~~
7 ~~and the individual or body to whom it relates is taken to a hospital, the~~
8 ~~hospital must be notified of the contents and the document or other evidence~~
9 ~~must be sent to the hospital.~~

10 (d) ~~If, at or near the time of death of a patient, a hospital knows~~
11 ~~that an anatomical gift has been made pursuant to § 20-17-603(a) or a release~~
12 ~~and removal of a part has been permitted pursuant to § 20-17-604, or that a~~
13 ~~patient or an individual identified as in transit to the hospital is a donor,~~
14 ~~the hospital shall notify the donee if one is named and known to the~~
15 ~~hospital; if not, it shall notify an appropriate procurement organization.~~
16 ~~The hospital shall cooperate in the implementation of the anatomical gift or~~
17 ~~release and removal of a part.~~

18 (e) ~~A person who fails to discharge the duties imposed by this section~~
19 ~~is not subject to criminal or civil liability but is subject to appropriate~~
20 ~~administrative sanctions.~~

21
22 ~~20-17-606. Persons who may become donees — Purposes for which~~
23 ~~anatomical gifts may be made.~~

24 (a) ~~The following persons may become donees of anatomical gifts for~~
25 ~~the purposes stated:~~

26 (1) ~~A hospital, physician, surgeon, or procurement organization,~~
27 ~~for transplantation, therapy, medical or dental education, research, or~~
28 ~~advancement of medical or dental science;~~

29 (2) ~~An accredited medical or dental school, college, or~~
30 ~~university for education, research, or advancement of medical or dental~~
31 ~~science; or~~

32 (3) ~~A designated individual for transplantation or therapy~~
33 ~~needed by that individual.~~

34 (b) ~~An anatomical gift may be made to a designated donee or without~~
35 ~~designating a donee. If a donee is not designated or if the donee is not~~
36 ~~available or rejects the anatomical gift, the anatomical gift may be accepted~~

1 ~~by any hospital.~~

2 ~~(c) If the donee knows of the decedent's refusal or contrary~~
3 ~~indications to make an anatomical gift or that an anatomical gift by a member~~
4 ~~of a class having priority to act is opposed by a member of the same class or~~
5 ~~a prior class under § 20-17-603(a), the donee may not accept the anatomical~~
6 ~~gift.~~

7
8 ~~20-17-607. Delivery of document of gift.~~

9 ~~(a) Delivery of a document of gift during the donor's lifetime is not~~
10 ~~required for the validity of an anatomical gift.~~

11 ~~(b) If an anatomical gift is made to a designated donee, the document~~
12 ~~of gift, or a copy, may be delivered to the donee to expedite the appropriate~~
13 ~~procedures after death. The document of gift, or a copy, may be deposited in~~
14 ~~any hospital, procurement organization, or registry office that accepts it~~
15 ~~for safekeeping or for facilitation of procedures after death. On request of~~
16 ~~an interested person, upon or after the donor's death, the person in~~
17 ~~possession shall allow the interested person to examine or copy the document~~
18 ~~of gift.~~

19
20 ~~20-17-608. Rights and duties at death.~~

21 ~~(a) Rights of a donee created by an anatomical gift are superior to~~
22 ~~rights of others except with respect to autopsies under § 20-17-611(b). A~~
23 ~~donee may accept or reject an anatomical gift. If a donee accepts an~~
24 ~~anatomical gift of an entire body, the donee, subject to the terms of the~~
25 ~~gift, may allow embalming and use of the body in funeral services. If the~~
26 ~~gift is a part of a body, the donee, upon the death of the donor and before~~
27 ~~embalming, shall cause the part to be removed without unnecessary mutilation.~~
28 ~~After removal of the part, custody of the remainder of the body vests in the~~
29 ~~person under obligation to dispose of the body.~~

30 ~~(b) The time of death must be determined by a physician or surgeon who~~
31 ~~attends the donor at death or, if none, the physician or surgeon who~~
32 ~~certifies the death. Neither the physician or surgeon who attends the donor~~
33 ~~at death nor the physician or surgeon who determines the time of death may~~
34 ~~participate in the procedures for removing or transplanting a part unless the~~
35 ~~document of gift designates a particular physician or surgeon pursuant to §~~
36 ~~20-17-602(d).~~

1 ~~(c) If there has been an anatomical gift, a physician, surgeon, or~~
2 ~~technician may remove any donated parts and an enucleator may remove any~~
3 ~~donated eyes or parts of eyes, after determination of death by a physician or~~
4 ~~surgeon.~~

5
6 ~~20-17-609. Coordination of procurement and use.~~

7 ~~Each hospital in this state, after consultation with other hospitals~~
8 ~~and procurement organizations, shall establish agreements or affiliations for~~
9 ~~coordination of procurement and use of human bodies and parts.~~

10
11 ~~20-17-610. Sale or purchase of parts prohibited.~~

12 ~~(a) A person may not knowingly, for valuable consideration, purchase~~
13 ~~or sell a part for transplantation or therapy, if removal of the part is~~
14 ~~intended to occur after the death of the decedent.~~

15 ~~(b) Valuable consideration does not include reasonable payment for the~~
16 ~~removal, processing, disposal, preservation, quality control, storage,~~
17 ~~transportation, or implantation of a part.~~

18 ~~(c) A person who violates this section is guilty of a Class C felony.~~

19
20 ~~20-17-611. Examination—Autopsy—Liability.~~

21 ~~(a) An anatomical gift authorizes any reasonable examination necessary~~
22 ~~to assure medical acceptability of the gift for the purposes intended.~~

23 ~~(b) The provisions of this subchapter are subject to the laws of this~~
24 ~~state governing autopsies.~~

25 ~~(c) A hospital, physician, surgeon, coroner, hospital administrator,~~
26 ~~enucleator, technician, or other person, who acts in accordance with this~~
27 ~~subchapter or with the applicable anatomical gift law of another state or~~
28 ~~attempts in good faith to do so, is not liable for that act in a civil action~~
29 ~~or criminal proceeding.~~

30 ~~(d) An individual who makes an anatomical gift pursuant to § 20-17-602~~
31 ~~or § 20-17-603 and the individual's estate are not liable for any injury or~~
32 ~~damage that may result from the making or the use of the anatomical gift.~~

33
34 ~~20-17-612. Transitional provisions.~~

35 ~~This subchapter applies to a document of gift, revocation, or refusal~~
36 ~~to make an anatomical gift signed by the donor or a person authorized to make~~

1 ~~or object to making an anatomical gift before, on, or after March 9, 1989.~~

2
3 ~~20-17-613. Uniformity of application and construction.~~

4 ~~This subchapter shall be applied and construed to effectuate its~~
5 ~~general purpose to make uniform the law with respect to the subject of this~~
6 ~~subchapter among states enacting it.~~

7
8 SECTION 7. Arkansas Code § 20-17-615 is repealed.

9 ~~20-17-615. Short title.~~

10 ~~This subchapter may be cited as the "Arkansas Anatomical Gift Act".~~

11
12 SECTION 8. Arkansas Code § 20-17-705(b), concerning the wishes of a
13 deceased person for disposition of the body is amended to read as follows:

14 (b) Any adult may by will or otherwise donate his or her body to the
15 University of Arkansas for Medical Sciences under the ~~Arkansas Anatomical~~
16 ~~Gift Act, § 20-17-601 et seq.~~ Revised Arkansas Anatomical Gift Act, § 20-17-
17 1201 et seq.

18
19 SECTION 9. Arkansas Code § 27-16-801 is amended to read as follows:

20 *27-16-801. Licenses generally - Validity periods - Contents - Fees -*
21 *Disposition of moneys.*

22 (a)(1) *In a manner prescribed by the Commissioner of Motor Vehicles,*
23 *the Office of Motor Vehicle shall issue:*

24 (A) *A Class D license or a Class M license to each applicant qualified*
25 *therefor, for a period of four (4) years, upon payment of twelve dollars*
26 *(\$12.00);*

27 (B) *A Class MD license to each applicant qualified*
28 *therefor, for a period of not more than two (2) years, upon payment of two*
29 *dollars (\$2.00);*

30 (C) *Every applicant for a Class D, Class M, or Class MD*
31 *license under §§ 27-16-704, 27-16-807, or 27-20-108 shall pay an examination*
32 *fee of five dollars (\$5.00) for the first examination and a fee of five*
33 *dollars (\$5.00) for each subsequent examination, except that for each*
34 *examination after the third examination there shall be no charge if the*
35 *applicant produces receipts for having paid the fees for the previous*
36 *examinations. The examination fee shall be remitted in a manner prescribed by*

1 the commissioner.

2 (2) Each license shall include:

3 (A) A distinguishing number assigned to the licensee;

4 (B)(i) Except as provided under subdivision (a)(2)(B)(ii)
5 of this section, the name, residence address, date of birth, and a brief
6 description of the licensee.

7 (ii) The following exceptions to providing a
8 residence address and instead providing a post office box address shall be
9 allowed at the option of the licensee:

10 (a) If the licensee is a law enforcement
11 officer; or

12 (b) If the licensee is a victim of domestic
13 violence or the dependent of a victim of domestic violence as provided under
14 § 27-16-811; and

15 (C) A space upon which the licensee may affix his or her
16 signature.

17 (3) The licensee shall affix his signature in ink in a space
18 provided, and no license shall be valid until it shall have been so signed by
19 the licensee.

20 (4) At the time of initial issuance or at the time of renewal of
21 a license, the distinguishing number assigned to the licensee for his or her
22 license shall be a nine-digit number assigned to the specific licensee by the
23 commissioner.

24 (b)(1)(A) All licenses, as described in subsection (a) of this
25 section, shall include a color photograph of the licensee, and such
26 photograph shall be made a part of the license at the time of application. If
27 the licensee is under eighteen years of age at the time the license is
28 issued, the license shall state that the licensee was under eighteen years of
29 age at the time of issuance. If the licensee was at least eighteen years of
30 age but under twenty-one years of age at the time the license is issued, the
31 license shall state that the licensee was under twenty-one years of age at
32 the time the license was issued.

33 (B) [Repealed.]

34 (2) A license may be valid without a photograph of the licensee
35 when the commissioner is advised that the requirement of the photograph is
36 either objectionable on the grounds of religious belief or the licensee is

1 unavailable to have the photograph made.

2 (c)(1) In addition to the license fee prescribed by subsection (a) of
3 this section, the office shall collect a penalty equal to fifty percent (50%)
4 of the amount thereof from each driver, otherwise qualified, who shall
5 operate a motor vehicle over the highways of this state without a valid
6 license.

7 (2) Such penalty shall be in addition to any other penalty which
8 may be prescribed by law.

9 (d) All license fees collected under subsection (a) of this section
10 shall be deposited in the State Treasury as special revenues, and the net
11 amount thereof shall be credited to the Department of Arkansas State Police
12 Fund, to be used for the operation, maintenance, and improvement of the
13 Department of Arkansas State Police.

14 (e)(1) The office shall not charge an additional fee for the color
15 photograph provided for in subsection (b) of this section for those
16 applicants making a renewal application for the first time.

17 (2) In addition to the regular license fee, a fee of one dollar
18 (\$1.00) shall be charged for all subsequent renewals.

19 (3) All persons applying for an Arkansas license for the first
20 time and all persons who are required to take the driver's written
21 examination as provided for in this act shall be charged the additional fee
22 of one dollar (\$1.00).

23 (4) All persons who are required to have their eyesight tested
24 prior to initial licensing or upon subsequent license renewal as provided for
25 in this act shall be charged an additional fee of one dollar (\$1.00) upon
26 issuance of the license.

27 ~~(f) The office shall provide on the reverse side of the driver's~~
28 ~~license issued a statement and space whereby the licensee may certify~~
29 ~~willingness to make an anatomical gift under the provisions of § 20-17-601 et~~
30 ~~seq.~~

31 ~~(g)~~(f) Moneys collected from the penalty fee provided in subsection
32 (c) of this section and the fees provided in subsection (e) of this section
33 shall be deposited in the State Treasury into the Constitutional Officers
34 Fund and the State Central Services Fund, and the net amount shall be
35 credited to the Department of Finance and Administration to be used to help
36 defray the cost of the driver license program which shall be payable

1 therefrom.

2 ~~(h)~~(g) Such fees as are collected under subsection (a) of this section
3 shall be remitted to the State Treasury, there to be deposited as special
4 revenues to the credit of the Department of Arkansas State Police Fund, to be
5 used for the operation, maintenance, and improvement of the Department of
6 Arkansas State Police.

7 ~~(i)~~(h) In addition to the license fees imposed in subsections (a) and
8 (e) of this section, a fee of six dollars (\$6.00) shall be charged for the
9 issuance or renewal of any Class D, M, or MD license. The fees collected
10 under this subsection shall be remitted to the State Treasury, there to be
11 deposited as special revenues to the credit of the Department of Arkansas
12 State Police Fund, to be used for the payment of health insurance premiums
13 for uniformed employees of the Department of Arkansas State Police.

14

15 SECTION 10. EMERGENCY CLAUSE. It is found and determined by the
16 General Assembly of the State of Arkansas that the donation of parts of human
17 bodies provides a significant source for protecting the health and safety of
18 the citizens of Arkansas; and that continuous advances in the technology of
19 human transplants and the inherent limitations incident to transplantation
20 from dead bodies require that this act become effective immediately.
21 Therefore, an emergency is declared to exist and this act being necessary for
22 the preservation of the public peace, health, and safety shall become
23 effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,
26 the expiration of the period of time during which the Governor may veto the
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is
29 overridden, the date the last house overrides the veto.

30

31

/s/ Horn

32

33

34

35

36