

1 S.205

2 Introduced by Senator Ayer

3 Referred to Committee on Health & Welfare

4 Date: January 5, 2010

5 Subject: Health; organ donation; Revised Uniform Anatomical Gift Act

6 Statement of purpose: This bill proposes to update Vermont's laws regarding  
7 anatomical gifts to conform to the Revised Uniform Anatomical Gift Act.

8 An act relating to the Revised Uniform Anatomical Gift Act

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 ~~Sec. 1. 18 V.S.A. chapter 151 is added to read:~~

11 ~~CHAPTER 151. REVISED UNIFORM ANATOMICAL GIFT ACT~~

12 ~~§ 6001. SHORT TITLE~~

13 ~~This chapter may be cited as the "Revised Uniform Anatomical Gift Act."~~

14 ~~§ 6002. DEFINITIONS~~

15 ~~As used in this chapter:~~

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

17 ~~(2) "Agent" means an individual:~~

18 ~~(A) authorized to make health care decisions on the principal's behalf~~

19 ~~by advance directive pursuant to chapter 231 of this title; or~~

20 ~~(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 body to  
3 take effect after the donor's death for the purpose of transplantation, therapy,  
4 research, or education.

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

8 (5) "Disinterested witness" means a witness other than the spouse, child,  
9 parent, sibling, grandchild, grandparent, or guardian of the individual who  
10 makes, amends, revokes, or refuses to make an anatomical gift, or another  
11 adult who exhibited special care and concern for the individual. The term does  
12 not include a person to which an anatomical gift could pass under section 6011  
13 of this title.

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

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

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

21 (9) "Driver's license" means a license or permit issued by the Vermont

1 ~~department of motor vehicles to operate a vehicle, whether or not conditions~~  
2 ~~are attached to the license or permit.~~

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

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

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

12 (13) "Identification card" means an identification card issued by the  
13 Vermont department of motor vehicles.

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

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

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

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

21 (18) "Part" means an organ, an eye, or tissue of a human being. The

1 ~~term does not include the whole body.~~

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

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

8 (21) "Procurement organization" means an eye bank, an organ  
9 procurement organization, or a tissue bank.

10 (22) "Prospective donor" means an individual who is dead or near death  
11 and has been determined by a procurement organization to have a part that  
12 could be medically suitable for transplantation, therapy, research, or education.

13 The term does not include an individual who has made a refusal.

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

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

20 (25) "Record" means information that is inscribed on a tangible medium  
21 or that is stored in an electronic or other medium and is retrievable in

1 ~~perceivable form.~~

2 (26) "Refusal" means a record created under section 6007 of this title  
3 that expressly states an intent to bar other persons from making an anatomical  
4 gift of an individual's body or part.

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

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

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

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

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

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

20 (31) "Tissue bank" means a person that is licensed, accredited, or  
21 regulated under federal or state law to engage in the recovery, screening,

1 ~~testing, processing, storage, or distribution of tissue.~~

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

5 § 6003. APPLICABILITY

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

8 § 6004. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR'S

9 DEATH

10 Subject to section 6008 of this title, an anatomical gift of a donor's body or  
11 part may be made during the life of the donor for the purpose of  
12 transplantation, therapy, research, or education in the manner provided in  
13 section 6005 of this title by:

14 (1) the donor, if the donor is an adult or if the donor is a minor and is  
15 either:

16 (A) emancipated; or

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

19 (2) an agent of the donor, unless the advance directive or other record  
20 prohibits the agent from making an anatomical gift;

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

1 ~~(4) the donor's guardian.~~

2 § 6005. MANNER OF MAKING ANATOMICAL GIFT BEFORE

3 DONOR'S DEATH

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

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

8 (2) in a will;

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

12 (4) as provided in subsection (b) of this section.

13 (b) A donor or other person authorized to make an anatomical gift under  
14 section 6004 of this title may make a gift by a donor card or other record  
15 signed by the donor or other person making the gift or by authorizing that a  
16 statement or symbol indicating that the donor has made an anatomical gift be  
17 included on a donor registry. If the donor or other person is physically unable  
18 to sign a record, the record may be signed by another individual at the direction  
19 of the donor or other person and must:

20 (1) be witnessed by at least two adults, at least one of whom is a  
21 disinterested witness, who have signed at the request of the donor or the other

1 ~~person; and~~

2 (2) state that it has been signed and witnessed as provided in  
3 subdivision (1) of this subsection.

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

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

10 § 6006. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE

11 DONOR'S DEATH

12 (a) Subject to section 6008 of this title, a donor or other person authorized  
13 to make an anatomical gift under section 6004 of this title may amend or  
14 revoke an anatomical gift by:

15 (1) a record signed by:

16 (A) the donor;

17 (B) the other person; or

18 (C) subject to subsection (b) of this section, another individual acting  
19 at the direction of the donor or the other person if the donor or other person is  
20 physically unable to sign; or

21 (2) a later-executed document of gift that amends or revokes a previous

1 ~~anatomical gift or portion of an anatomical gift, either expressly or by~~  
2 ~~inconsistency.~~

3 ~~(b) A record signed pursuant to subdivision (a)(1)(C) of this section must:~~

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

7 ~~(2) state that it has been signed and witnessed as provided in~~  
8 ~~subdivision (1) of this subsection.~~

9 ~~(c) Subject to section 6008 of this title, a donor or other person authorized~~  
10 ~~to make an anatomical gift under section 6004 of this title may revoke an~~  
11 ~~anatomical gift by the destruction or cancellation of the document of gift, or~~  
12 ~~the portion of the document of gift used to make the gift, with the intent to~~  
13 ~~revoke the gift.~~

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

17 ~~(e) A donor who makes an anatomical gift in a will may amend or revoke~~  
18 ~~the gift in the manner provided for amendment or revocation of wills or as~~  
19 ~~provided in subsection (a) of this section.~~

~~§ 6007. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF~~

~~REFUSAL~~

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

~~(1) a record signed by:~~

~~(A) the individual; or~~

~~(B) subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;~~

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

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

~~(b) A record signed pursuant to subdivision (a)(1)(B) of this section must:~~

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

~~(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.~~

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

~~(1) in the manner provided in subsection (a) of this section for making a refusal;~~

1 ~~(2) by subsequently making an anatomical gift pursuant to section 6005~~  
2 of this title that is inconsistent with the refusal; or

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

6 (d) Except as otherwise provided in subsection 6008(h) of this title, in the  
7 absence of an express, contrary indication by the individual set forth in the  
8 refusal, an individual's unrevoked refusal to make an anatomical gift of the  
9 individual's body or part bars all other persons from making an anatomical gift  
10 of the individual's body or part.

11 § 6008. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT,  
12 OR REVOCATION

13 (a) Except as otherwise provided in subsection (g) of this section and  
14 subject to subsection (f) of this section, in the absence of an express, contrary  
15 indication by the donor, a person other than the donor is barred from making,  
16 amending, or revoking an anatomical gift of a donor's body or part if the donor  
17 made an anatomical gift of the donor's body or part under section 6005 of this  
18 title or an amendment to an anatomical gift of the donor's body or part under  
19 section 6006 of this title.

20 (b) A donor's revocation of an anatomical gift of the donor's body or part  
21 under section 6006 of this title is not a refusal and does not bar another person

1 ~~specified in section 6004 or 6009 of this title from making an anatomical gift~~  
2 ~~of the donor's body or part under section 6005 or 6010 of this title.~~

3 ~~(c) If a person other than the donor makes an unrevoked anatomical gift of~~  
4 ~~the donor's body or part under section 6005 of this title or an amendment to an~~  
5 ~~anatomical gift of the donor's body or part under section 6006 of this title,~~  
6 ~~another person may not make, amend, or revoke the gift of the donor's body or~~  
7 ~~part under section 6010 of this title.~~

8 ~~(d) A revocation of an anatomical gift of a donor's body or part under~~  
9 ~~section 6006 of this title by a person other than the donor does not bar another~~  
10 ~~person from making an anatomical gift of the body or part under section 6005~~  
11 ~~or 6010 of this title.~~

12 ~~(e) In the absence of an express, contrary indication by the donor or other~~  
13 ~~person authorized to make an anatomical gift under section 6004 of this title,~~  
14 ~~an anatomical gift of a part is neither a refusal to give another part nor a~~  
15 ~~limitation on the making of an anatomical gift of another part at a later time by~~  
16 ~~the donor or another person.~~

17 ~~(f) In the absence of an express, contrary indication by the donor or other~~  
18 ~~person authorized to make an anatomical gift under section 6004 of this title,~~  
19 ~~an anatomical gift of a part for one or more of the purposes set forth in that~~  
20 ~~section is not a limitation on the making of an anatomical gift of the part for~~  
21 ~~any of the other purposes by the donor or any other person under section 6005~~

1 ~~or 6010 of this title.~~

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

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

7 § 6009. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S  
8 BODY OR PART

9 (a) Subject to subsections (b) and (c) of this section and unless barred by  
10 section 6007 or 6008 of this title, an anatomical gift of a decedent's body or  
11 part for purpose of transplantation, therapy, research, or education may be  
12 made by any member of the following classes of persons who is reasonably  
13 available, in the order of priority listed:

14 (1) an agent of the decedent at the time of death who could have made  
15 an anatomical gift under subdivision 6004(2) of this title immediately before  
16 the decedent's death;

17 (2) the spouse of the decedent;

18 (3) adult children of the decedent;

19 (4) parents of the decedent;

20 (5) adult siblings of the decedent;

21 (6) adult grandchildren of the decedent;

1 ~~(7) grandparents of the decedent;~~

2 ~~(8) an adult who exhibited special care and concern for the decedent;~~

3 ~~(9) the persons who were acting as the guardians of the person of the~~

4 ~~decedent at the time of death; and~~

5 ~~(10) any other person having the authority to dispose of the decedent's~~

6 ~~body.~~

7 ~~(b) If there is more than one member of a class listed in subdivision (a)(1),~~

8 ~~(3), (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift,~~

9 ~~an anatomical gift may be made by a member of the class unless that member~~

10 ~~or a person to which the gift may pass under section 6011 of this title knows of~~

11 ~~an objection by another member of the class. If an objection is known, the gift~~

12 ~~may be made only by a majority of the members of the class who are~~

13 ~~reasonably available.~~

14 ~~(c) A person may not make an anatomical gift if, at the time of the~~

15 ~~decedent's death, a person in a prior class under subsection (a) of this section is~~

16 ~~reasonably available to make or to object to the making of an anatomical gift.~~

17 ~~§ 6010. MANNER OF MAKING, AMENDING, OR REVOKING~~

18 ~~ANATOMICAL GIFT OF DECEDENT'S BODY OR PART~~

19 ~~(a) A person authorized to make an anatomical gift under section 6009 of~~

20 ~~this title may make an anatomical gift by a document of gift signed by the~~

21 ~~person making the gift or by that person's oral communication that is~~

1 ~~electronically recorded or is contemporaneously reduced to a record and signed~~  
2 ~~by the individual receiving the oral communication.~~

3 ~~(b) Subject to subsection (c) of this section, an anatomical gift by a person~~  
4 ~~authorized under section 6009 of this title may be amended or revoked orally~~  
5 ~~or in a record by any member of a prior class who is reasonably available. If~~  
6 ~~more than one member of the prior class is reasonably available, the gift made~~  
7 ~~by a person authorized under section 6009 of this title may be:~~

8 ~~(1) amended only if a majority of the reasonably available members~~  
9 ~~agree to the amending of the gift; or~~

10 ~~(2) revoked only if a majority of the reasonably available members~~  
11 ~~agree to the revoking of the gift or if they are equally divided as to whether to~~  
12 ~~revoke the gift.~~

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

18 ~~§ 6011. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT;~~

19 ~~PURPOSE OF ANATOMICAL GIFT~~

20 ~~(a) An anatomical gift may be made to the following persons named in the~~  
21 ~~document of gift:~~

---

1 ~~(1) a hospital; accredited medical school, dental school, college, or~~  
2 ~~university; organ procurement organization; or other appropriate person, for~~  
3 ~~research or education;~~

4 ~~(2) subject to subsection (b) of this section, an individual designated by~~  
5 ~~the person making the anatomical gift if the individual is the recipient of the~~  
6 ~~part;~~

7 ~~(3) an eye bank or tissue bank.~~

8 ~~(b) If an anatomical gift to an individual under subdivision (a)(2) of this~~  
9 ~~section cannot be transplanted into the individual, the part passes in accordance~~  
10 ~~with subsection (g) of this section, in the absence of an express, contrary~~  
11 ~~indication by the person making the anatomical gift.~~

12 ~~(c) If an anatomical gift of one or more specific parts or of all parts is made~~  
13 ~~in a document of gift that does not name a person described in subsection (a) of~~  
14 ~~this section but identifies the purpose for which an anatomical gift may be~~  
15 ~~used, the following rules apply:~~

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

18 ~~(2) If the part is tissue and the gift is for the purpose of transplantation~~  
19 ~~or therapy, the gift passes to the appropriate tissue bank.~~

20 ~~(3) If the part is an organ and the gift is for the purpose of~~  
21 ~~transplantation or therapy, the gift passes to the appropriate organ procurement~~

1 ~~organization as custodian of the organ.~~

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

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

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

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

20 (g) For purposes of subsections (b), (e), and (f) of this section, the  
21 following rules apply:

---

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

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

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

5 ~~(h) An anatomical gift of an organ for transplantation or therapy, other than~~  
6 ~~an anatomical gift under subdivision (a)(2) of this section, passes to the organ~~  
7 ~~procurement organization as custodian of the organ.~~

8 ~~(i) If an anatomical gift does not pass pursuant to subsections (a)~~  
9 ~~through (h), inclusive, of this section, or the decedent's body or part is not used~~  
10 ~~for transplantation, therapy, research, or education, custody of the body or part~~  
11 ~~passes to the person under obligation to dispose of the body or part.~~

12 ~~(j) A person may not accept an anatomical gift if the person knows that the~~  
13 ~~gift was not effectively made under section 6005 or 6010 of this title or if the~~  
14 ~~person knows that the decedent made a refusal under section 6007 of this title~~  
15 ~~that was not revoked. For purposes of this subsection, if a person knows that~~  
16 ~~an anatomical gift was made on a document of gift, the person is deemed to~~  
17 ~~know of any amendment or revocation of the gift or any refusal to make an~~  
18 ~~anatomical gift on the same document of gift.~~

19 ~~(k) Except as otherwise provided in subdivision (a)(2) of this section,~~  
20 ~~nothing in this chapter affects the allocation of organs for transplantation or~~  
21 ~~therapy.~~

§ 6012. SEARCH AND NOTIFICATION

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

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

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

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

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

§ 6013. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO EXAMINE

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

1 ~~(b) Upon or after an individual's death, a person in possession of a~~  
2 ~~document of gift or a refusal to make an anatomical gift with respect to the~~  
3 ~~individual shall allow examination and copying of the document of gift or~~  
4 ~~refusal by a person authorized to make or object to the making of an~~  
5 ~~anatomical gift with respect to the individual or by a person to which the gift~~  
6 ~~could pass under section 6011 of this title.~~

7 § 6014. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION  
8 AND OTHERS

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

14 (b) A procurement organization must be allowed reasonable access to  
15 information in the records of the Vermont department of motor vehicles to  
16 ascertain whether an individual at or near death is a donor.

17 (c) When a hospital refers an individual at or near death to a procurement  
18 organization, the organization may conduct any reasonable examination  
19 necessary to ensure the medical suitability of a part that is or could be the  
20 subject of an anatomical gift for transplantation, therapy, research, or education  
21 from a donor or a prospective donor. During the examination period, measures

1 ~~necessary to ensure the medical suitability of the part may not be withdrawn~~  
2 unless the hospital or procurement organization knows that the individual  
3 expressed a contrary intent.

4 (d) Unless prohibited by law other than this chapter, at any time after a  
5 donor's death, the person to which a part passes under section 6011 of this title  
6 may conduct any reasonable examination necessary to ensure the medical  
7 suitability of the body or part for its intended purpose.

8 (e) Unless prohibited by law other than this chapter, an examination under  
9 subsection (c) or (d) of this section may include an examination of all medical  
10 and dental records of the donor or prospective donor.

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

16 (g) Upon referral by a hospital under subsection (a) of this section, a  
17 procurement organization shall make a reasonable search for any person listed  
18 in section 6009 of this title having priority to make an anatomical gift on  
19 behalf of a prospective donor. If a procurement organization receives  
20 information that an anatomical gift to any other person was made, amended, or  
21 revoked, it shall promptly advise the other person of all relevant information.

1 ~~(h) Subject to subsection 6011(i) and section 6023 of this title, the rights of~~  
2 ~~the person to which a part passes under section 6011 are superior to the rights~~  
3 ~~of all others with respect to the part. The person may accept or reject an~~  
4 ~~anatomical gift in whole or in part. Subject to the terms of the document of~~  
5 ~~gift and this chapter, a person that accepts an anatomical gift of an entire body~~  
6 ~~may allow embalming, burial or cremation, and use of remains in a funeral~~  
7 ~~service. If the gift is of a part, the person to which the part passes under~~  
8 ~~section 6011 of this title, upon the death of the donor and before embalming,~~  
9 ~~burial, or cremation, shall cause the part to be removed without unnecessary~~  
10 ~~mutilation.~~

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

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

16 § 6015. COORDINATION OF PROCUREMENT AND USE

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

20 § 6016. SALE OR PURCHASE OF PARTS PROHIBITED

21 (a) Except as otherwise provided in subsection (b) of this section, no

1 ~~person shall, for valuable consideration, knowingly purchase or sell a part for~~  
2 ~~transplantation or therapy if removal of a part from an individual is intended to~~  
3 ~~occur after the individual's death.~~

4 ~~(b) A person may charge a reasonable amount for the removal, processing,~~  
5 ~~preservation, quality control, storage, transportation, implantation, or disposal~~  
6 ~~of a part.~~

7 ~~(c) A person who violates subsection (a) of this section shall be imprisoned~~  
8 ~~not more than five years or fined not more than \$50,000.00 or both.~~

9 § 6017. OTHER PROHIBITED ACTS

10 ~~(a) No person shall, in order to obtain a financial gain, intentionally falsify,~~  
11 ~~forge, conceal, deface, or obliterate a document of gift, an amendment or~~  
12 ~~revocation of a document of gift, or a refusal.~~

13 ~~(b) A person who violates subsection (a) of this section shall be imprisoned~~  
14 ~~not more than five years or fined not more than \$50,000.00 or both.~~

15 § 6018. IMMUNITY

16 ~~(a) A person that acts in accordance with this chapter or with the applicable~~  
17 ~~anatomical gift law of another state or attempts in good faith to do so is not~~  
18 ~~liable for the act in a civil action, criminal prosecution, or administrative~~  
19 ~~proceeding.~~

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

1 ~~(c) In determining whether an anatomical gift has been made, amended, or~~  
2 ~~revoked under this chapter, a person may rely upon representations of an~~  
3 ~~individual listed in subdivision (a)(2), (3), (4), (5), (6), (7), or (8) of~~  
4 ~~section 6009 of this title relating to the individual's relationship to the donor or~~  
5 ~~prospective donor unless the person knows that the representation is untrue.~~

6 § 6019. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO  
7 EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF  
8 VALIDITY

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

10 (1) this chapter;

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

12 (3) the laws of the state or country where the person making the

13 anatomical gift was domiciled, has a place of residence, or was a national at  
14 the time the document of gift was executed.

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

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

~~§ 6020. ANATOMICAL GIFT REGISTRY~~

~~(a) The department of health, in coordination with the department of motor vehicles, shall develop and maintain a registry identifying persons who have authorized a document of an anatomical gift. The registry shall be maintained in a secured database that provides authorized organ procurement organizations, tissue banks, and eye banks immediate access to the registry at all times. All persons entered in the registry shall have the right to revoke or amend their document of gift as provided in this chapter. In no event shall the data be accessed or used for any purpose unrelated to the making of anatomical gifts.~~

~~(b) The commissioner is authorized to contract with a qualified entity to assist with the development and maintenance of the anatomical gift registry and to secure grants from public and private sources and to receive and disburse funds which are assigned, donated, or bequeathed to the department to cover the costs of the registry.~~

~~(c) The commissioner of health and the commissioner of motor vehicles shall adopt rules pursuant to chapter 25 of Title 3 for implementing their respective roles in the development and maintenance of the registry, including interdepartmental coordination, and for the security of and limitations on access to the computerized data.~~

~~§ 6021. EFFECT OF ANATOMICAL GIFT ON ADVANCE DIRECTIVE~~

~~FOR HEALTH CARE~~

~~(a) In this section:~~

~~(1) “Advance directive” has the same meaning as in subdivision 9701(1) of this title.~~

~~(2) “Declaration” means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.~~

~~(3) “Health-care decision” means any decision regarding the health care of the prospective donor.~~

~~(b) If a prospective donor has a declaration or advance directive and the terms of the declaration or advance directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor’s attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor’s declaration or advance directive or, if none or the agent is not reasonably available, another person authorized by law other than this chapter to make health-care decisions on behalf of the prospective donor shall act for the donor to resolve the conflict. The conflict must be resolved as~~

1 ~~expeditiously as possible. Information relevant to the resolution of the conflict~~  
2 may be obtained from the appropriate procurement organization and any other  
3 person authorized to make an anatomical gift for the prospective donor under  
4 section 6009 of this title. Before resolution of the conflict, measures necessary  
5 to ensure the medical suitability of the part may not be withheld or withdrawn  
6 from the prospective donor if withholding or withdrawing the measures is not  
7 contraindicated by appropriate end-of-life care.

8 § 6022. COOPERATION BETWEEN MEDICAL EXAMINER AND  
9 PROCUREMENT ORGANIZATION

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

13 (b) If a medical examiner receives notice from a procurement organization  
14 that an anatomical gift might be available or was made with respect to a  
15 decedent whose body is under the jurisdiction of the medical examiner and a  
16 postmortem examination is going to be performed, unless the medical  
17 examiner denies recovery in accordance with section 6023 of this title, the  
18 medical examiner or designee shall conduct a postmortem examination of the  
19 body or the part in a manner and within a period compatible with its  
20 preservation for the purposes of the gift.

21 (c) A part may not be removed from the body of a decedent under the

1 ~~jurisdiction of a medical examiner for transplantation, therapy, research, or~~  
2 ~~education unless the part is the subject of an anatomical gift. The body of a~~  
3 ~~decedent under the jurisdiction of the medical examiner may not be delivered~~  
4 ~~to a person for research or education unless the body is the subject of an~~  
5 ~~anatomical gift. This subsection does not preclude a medical examiner from~~  
6 ~~performing the medicolegal investigation upon the body or parts of a decedent~~  
7 ~~under the jurisdiction of the medical examiner.~~

8 § 6023. FACILITATION OF ANATOMICAL GIFT FROM DECEDENT  
9 WHOSE BODY IS UNDER JURISDICTION OF MEDICAL  
10 EXAMINER

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

21 (b) The medical examiner may conduct a medicolegal examination by

1 ~~reviewing all medical records, laboratory test results, X rays, other diagnostic~~  
2 ~~results, and other information that any person possesses about a donor or~~  
3 ~~prospective donor whose body is under the jurisdiction of the medical~~  
4 ~~examiner which the medical examiner determines may be relevant to the~~  
5 ~~investigation.~~

6 ~~(c) A person that has any information requested by a medical examiner~~  
7 ~~pursuant to subsection (b) of this section shall provide that information as~~  
8 ~~expeditiously as possible to allow the medical examiner to conduct the~~  
9 ~~medicolegal investigation within a period compatible with the preservation of~~  
10 ~~parts for the purpose of transplantation, therapy, research, or education.~~

11 ~~(d) If an anatomical gift has been or might be made of a part of a decedent~~  
12 ~~whose body is under the jurisdiction of the medical examiner and a~~  
13 ~~postmortem examination is not required or the medical examiner determines~~  
14 ~~that a postmortem examination is required but that the recovery of the part that~~  
15 ~~is the subject of an anatomical gift will not interfere with the examination, the~~  
16 ~~medical examiner and procurement organization shall cooperate in the timely~~  
17 ~~removal of the part from the decedent for the purpose of transplantation,~~  
18 ~~therapy, research, or education.~~

19 ~~(e) If an anatomical gift of a part from the decedent under the jurisdiction~~  
20 ~~of the medical examiner has been or might be made but the medical examiner~~  
21 ~~initially believes that the recovery of the part could interfere with the~~

1 ~~postmortem investigation into the decedent's cause or manner of death, the~~  
2 medical examiner shall consult with the procurement organization or physician  
3 or technician designated by the procurement organization about the proposed  
4 recovery. After consultation, the medical examiner may allow the recovery.

5 (f) Following the consultation under subsection (e) of this section, in the  
6 absence of mutually agreed-upon protocols to resolve conflict between the  
7 medical examiner and the procurement organization, if the medical examiner  
8 intends to deny recovery, the medical examiner or designee, at the request of  
9 the procurement organization, shall attend the removal procedure for the part  
10 before making a final determination not to allow the procurement organization  
11 to recover the part. During the removal procedure, the medical examiner or  
12 designee may allow recovery by the procurement organization to proceed or, if  
13 the medical examiner or designee reasonably believes that the part may be  
14 involved in determining the decedent's cause or manner of death, deny  
15 recovery by the procurement organization.

16 (g) If the medical examiner or designee denies recovery under  
17 subsection (f) of this section, the medical examiner or designee shall:

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

20 (2) include the specific reasons in the records of the medical examiner;  
21 and

---

1 ~~(3) provide a record with the specific reasons to the procurement~~  
2 ~~organization.~~

3 ~~(h) If the medical examiner or designee allows recovery of a part under~~  
4 ~~subsection (d), (e), or (f) of this section, the procurement organization, upon~~  
5 ~~request, shall cause the physician or technician who removes the part to~~  
6 ~~provide the medical examiner with a record describing the condition of the~~  
7 ~~part, a biopsy, a photograph, and any other information and observations that~~  
8 ~~would assist in the postmortem examination.~~

9 ~~(i) If a medical examiner or designee is required to be present at a removal~~  
10 ~~procedure under subsection (f) of this section, upon request the procurement~~  
11 ~~organization requesting the recovery of the part shall reimburse the medical~~  
12 ~~examiner or designee for the additional costs incurred in complying with~~  
13 ~~subsection (f).~~

14 § 6024. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

18 § 6025. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
19 NATIONAL COMMERCE ACT

20 This act modifies, limits, and supersedes the Electronic Signatures in Global  
21 and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not

1 ~~modify, limit, or supersede Section 101(a) of that act, 15 U.S.C. Section 7001,~~  
2 ~~or authorize electronic delivery of any of the notices described in Section~~  
3 ~~103(b) of that act, 15 U.S.C. Section 7003(b).~~

4 Sec. 2. REPEAL

5 Chapter 109 of Title 18 (Uniform Anatomical Gift Act) is repealed.

6 Sec. 3. INTERPRETATION

7 18 V.S.A. § 6020 is the successor in interest to 18 V.S.A. § 5248  
8 (anatomical gift registry) and requires the departments of health and of motor  
9 vehicles to maintain the anatomical gift registry and rules relating to such  
10 registry created pursuant to 18 V.S.A. § 5248.

11 Sec. 4. EFFECTIVE DATE

12 ~~This act shall take effect July 1, 2010.~~

*Sec. 1. 18 V.S.A. chapter 151 is added to read:*

*CHAPTER 151. REVISED UNIFORM ANATOMICAL GIFT ACT*

*§ 6001. SHORT TITLE*

*This chapter may be cited as the “Revised Uniform Anatomical Gift Act.”*

*§ 6002. DEFINITIONS*

*As used in this chapter:*

*(1) “Adult” means an individual who is at least 18 years of age.*

*(2) “Agent” means an individual:*

*(A) authorized to make health care decisions on the principal’s*  
*behalf by an advance directive executed pursuant to chapter 231 of this title or*  
*by a health care power of attorney executed pursuant to the laws of this or*  
*another state; or*

*(B) expressly authorized to make an anatomical gift on the*  
*principal’s behalf by any other record signed by the principal.*

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

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

(5) “Disinterested witness” means a witness other than the spouse, reciprocal beneficiary, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 6011 of this title.

(6) “Document of gift” means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver’s license or nondriver identification card or an inclusion in a donor registry.

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

(8) “Donor registry” means a database that identifies donors and complies with the provisions of section 6020 of this title.

(9) “Driver’s license” means a license or permit issued by the Vermont department of motor vehicles to operate a vehicle, whether or not conditions are attached to the license or permit.

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

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

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

(13) “Know” means to have actual knowledge.

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

(15) “Nondriver identification card” means a nondriver identification card issued by the Vermont department of motor vehicles pursuant to 23 V.S.A.

§ 115.

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

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

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

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

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

(21) “Procurement organization” means an eye bank, an organ procurement organization, or a tissue bank.

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

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

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

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

(26) “Refusal” means a record created under section 6007 of this title that expressly states an intent to bar other persons from making an anatomical gift of an individual’s body or part.

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

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

(B) to attach to or logically associate with the record an electronic

symbol, sound, or process.

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

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

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

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

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

#### § 6003. APPLICABILITY

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

#### § 6004. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR'S DEATH

Subject to section 6008 of this title, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 6005 of this title by:

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

(A) emancipated; or

(B) authorized under state law to apply for a driver's license or nondriver identification card and is at least 16 years of age;

(2) an agent of the donor, unless the advance directive or other record prohibits the agent from making an anatomical gift;

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

(4) the donor's guardian.

#### § 6005. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S

DEATH

(a) A donor may make an anatomical gift:

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

(2) in a will;

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

(4) as provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under section 6004 of this title may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

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

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

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

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

§ 6006. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH

(a) Subject to section 6008 of this title, a donor or other person authorized to make an anatomical gift under section 6004 of this title may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

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

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

(b) A record signed pursuant to subdivision (a)(1)(C) of this section must:

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

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to section 6008 of this title, a donor or other person authorized to make an anatomical gift under section 6004 of this title may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

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

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

§ 6007. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF REFUSAL

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

(1) a record signed by:

(A) the individual; or

(B) subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

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

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

(b) A record signed pursuant to subdivision (a)(1)(B) of this section must:

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

(2) state that it has been signed and witnessed as provided in subdivision (1) of this subsection.

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

(1) in the manner provided in subsection (a) of this section for making a refusal;

(2) by subsequently making an anatomical gift pursuant to section 6005 of this title that is inconsistent with the refusal; or

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

(d) Except as otherwise provided in subsection 6008(h) of this title, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

§ 6008. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 6005 of this title or an amendment to an anatomical gift of the donor's body or part under section 6006 of this title.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 6006 of this title is not a refusal and does not bar another person specified in section 6004 or 6009 of this title from making an anatomical gift of the donor's body or part under section 6005 or 6010 of this title.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 6005 of this title or an amendment to an anatomical gift of the donor's body or part under section 6006 of this title, another person may not make, amend, or revoke the gift of the donor's body or part under section 6010 of this title.

(d) A revocation of an anatomical gift of a donor's body or part under

section 6006 of this title by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 6005 or 6010 of this title.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 6004 of this title, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 6004 of this title, an anatomical gift of a part for one or more of the purposes set forth in that section is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 6005 or 6010 of this title.

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

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

§ 6009. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART

(a) Subject to subsections (b) and (c) of this section and unless barred by section 6007 or 6008 of this title, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under subdivision 6004(2) of this title immediately before the decedent's death;

(2) the spouse of the decedent;

(3) the decedent's reciprocal beneficiary, as defined in 15 V.S.A. § 1302;

(4) adult children of the decedent;

(5) parents of the decedent;

(6) adult siblings of the decedent;

(7) adult grandchildren of the decedent;

(8) grandparents of the decedent;

(9) an adult who exhibited special care and concern for the decedent;

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

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

(b) If there is more than one member of a class listed in subdivision (a)(1), (4), (5), (6), (7), (8), or (10) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 6011 of this title knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

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

§ 6010. MANNER OF MAKING, AMENDING, OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART

(a) A person authorized to make an anatomical gift under section 6009 of this title may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under section 6009 of this title may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 6009 of this title may be:

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

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

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

knows of the revocation.

§ 6011. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT; PURPOSE OF ANATOMICAL GIFT

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

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

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

(3) an eye bank or tissue bank.

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

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

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

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

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

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

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

(e) If an anatomical gift of one or more specific parts is made in a

document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift shall pass in accordance with subsection (g) of this section, and the parts shall be used for transplantation or therapy, if suitable for those purposes; if not suitable for transplantation or therapy, the gift may be used for research or education.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift shall pass in accordance with subsection (g) of this section, and the parts shall be used for transplantation or therapy, if suitable for those purposes; if not suitable for transplantation or therapy, the gift may be used for research or education.

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

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

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

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

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h), inclusive, of this section, or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 6005 or 6010 of this title or if the person knows that the decedent made a refusal under section 6007 of this title that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in this chapter affects the allocation of organs for transplantation or therapy.

#### § 6012. SEARCH AND NOTIFICATION

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

individual who made a refusal:

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

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

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

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

§ 6013. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO EXAMINE

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

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 6011 of this title.

§ 6014. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS

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

(b) A procurement organization must be allowed reasonable access to the Vermont donor registry established pursuant to section 6020 of this title to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to assess the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination

period, measures necessary to maintain the potential medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under section 6011 of this title may conduct any reasonable examination necessary to assess the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this chapter, an examination under subsection (c) or (d) of this section may include serological and blood and tissue compatibility testing, as well as an examination of all medical and dental records of the donor or prospective donor.

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

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section 6009 of this title having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subsection 6011(i) and section 6023 of this title, the rights of the person to which a part passes under section 6011 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 6011 of this title, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent. As used in this section, "procedures" include actual physical removal and transplantation of a part but do not include the consent, process, disposal, preservation, quality measures, storage, transportation, or research involving a part.

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

§ 6015. COORDINATION OF PROCUREMENT AND USE

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

§ 6016. SALE OR PURCHASE OF PARTS PROHIBITED

(a) Except as otherwise provided in subsection (b) of this section, no person shall, for valuable consideration, knowingly purchase or sell a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death.

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

(c) A person who violates subsection (a) of this section shall be imprisoned not more than five years or fined not more than \$50,000.00 or both.

§ 6017. OTHER PROHIBITED ACTS

(a) No person shall, in order to obtain a financial gain, intentionally falsify, forge, conceal, deface, or obliterate a document of gift, an amendment or revocation of a document of gift, or a refusal.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than five years or fined not more than \$50,000.00 or both.

§ 6018. IMMUNITY

(a) A person who acts in accordance with this chapter or with the applicable anatomical gift law of another state or attempts in good faith to do so is not liable for the act in a civil action, criminal prosecution, or administrative proceeding. An act that relies upon a document of gift in a donor registry, a signed statement by a donor in an advance directive, or a donor card shall be presumed to be in good faith.

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

(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in subdivision 6009(a)(2), (3), (4), (5), (6), (7), (8), or (9) of this title relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

§ 6019. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY

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

(1) this chapter;

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

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

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

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

§ 6020. DONOR REGISTRY

(a) The department of health shall ensure that a registry is developed and maintained to identify people who have authorized a document of gift and shall oversee the operation of the registry.

(b) The department of motor vehicles is authorized to enter into a data use agreement with an organ procurement organization for the purpose of transmitting information identifying persons who have authorized a document of gift at the time of issuance of a driver's license or driver's license renewal and incorporating such information into a donor registry maintained by the organ procurement organization. Such information shall constitute the Vermont donor registry. The department of motor vehicles may secure grants from public and private sources, and receive and disburse funds that are assigned, donated, or bequeathed to the department to cover the costs of receiving and transmitting the document of gift data. As funds become available, documents of gift may be accepted and data forwarded from persons 16 and 17 years of age and persons being issued nondriver identification cards.

(c) The Vermont donor registry shall:

(1) contain a database that includes donors who have authorized an anatomical gift and provide a mechanism for an anatomical gift to be removed from the database;

(2) be accessible to other organ procurement organizations to allow them to obtain relevant information from the donor registry to determine, at or near the time of the death of the donor or a prospective donor, whether the

donor or prospective donor has authorized an anatomical gift; and

(3) be accessible 24 hours per day, seven days per week for the purposes specified in subdivisions (1) and (2) of this subsection.

(d) No later than January 15, 2011, the department of motor vehicles shall submit a report on its implementation of a data use agreement with a qualified organ procurement organization to the house and senate committees on government operations, the house committee on human services, and the senate committee on health and welfare.

(e) Personally identifiable information contained in a donor registry about a donor or prospective donor may not be used or disclosed by any organ procurement organization except with the express consent of the donor, prospective donor, or other person making the anatomical gift for any purpose other than to determine, at or near the time of the death of the donor or prospective donor, whether such donor or prospective donor has made, amended, or revoked an anatomical gift.

(f) Nothing in this section shall be construed to prohibit any person from creating or maintaining a donor registry that is not established under this section, provided that any such registry shall comply with the provisions of subsections (c) and (e) of this section.

§ 6021. [Reserved.]

§ 6022. COOPERATION BETWEEN MEDICAL EXAMINER AND PROCUREMENT ORGANIZATION

The chief medical examiner shall cooperate with procurement organizations, consistent with death investigation procedures, to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

§ 6023. [Reserved.]

§ 6024. HONORING DONOR INTENT

A person's decision to make a donation of that person's own organ or tissue after death shall be honored. In the absence of a revocation or amendment of an anatomical gift, health care providers and procurement organizations shall act in accordance with the donor's decision and may take appropriate actions to effect the anatomical gift.

§ 6025. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

§ 6026. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

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

§ 6027. PROTECTION OF INVESTIGATION OR EVIDENCE OF CRIME

Notwithstanding any other provision of this chapter, no action shall be taken under this act to take any anatomical gift when a person has died under suspicious circumstances or when a criminal cause of death is suspected until after a legal investigation by the police or the state's attorney has determined the facts unless the individual seeking to effect the anatomical gift has received the express written approval of the investigating officer and the investigating state's attorney.

Sec. 2. 15 V.S.A. § 1204(e) is amended to read:

(e) The following is a nonexclusive list of legal benefits, protections, and responsibilities of spouses, which shall apply in like manner to parties to a civil union:

\* \* \*

(19) laws relating to the making, revoking and objecting to anatomical gifts by others under ~~18 V.S.A. § 5240~~ 18 V.S.A. § 6009;

\* \* \*

Sec. 3. 15 V.S.A. § 1301(a) is amended to read:

(a) The purpose of this chapter is to provide two persons who are blood-relatives or related by adoption the opportunity to establish a consensual reciprocal beneficiaries relationship so they may receive the benefits and protections and be subject to the responsibilities that are granted to spouses in the following specific areas:

(1) Hospital visitation and medical decision-making under 18 V.S.A. § 1853;

(2) Decision-making relating to anatomical gifts under ~~18 V.S.A. § 5240~~ 18 V.S.A. § 6009;

\* \* \*

Sec. 4. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

*As used in this chapter:*

\* \* \*

(3) "Anatomical gift" shall have the same meaning as provided in subdivision ~~5238(1)~~ 6002(3) of this title.

\* \* \*

*Sec. 5. 18 V.S.A. § 9702 is amended to read:*

*§ 9702. ADVANCE DIRECTIVE*

*(a) An adult may do any or all of the following in an advance directive:*

\* \* \*

*(15) make, limit, or refuse to make an anatomical gift pursuant to chapter ~~109~~ 151 of this title;*

\* \* \*

*Sec. 6. 18 V.S.A. § 9715(b) is amended to read:*

*(b) Nothing in this chapter shall be construed to limit or abrogate an individual's ability to create a document of anatomical gift pursuant to chapter ~~109~~ 151 of this title.*

*Sec. 7. 23 V.S.A. § 618a is amended to read:*

*§ 618a. ANATOMICAL GIFT ACT; DONOR; FORM*

*The commissioner shall provide a form which, upon the licensee's execution, shall serve as a document of an anatomical gift under chapter ~~109~~ 151 of Title 18. An indicator shall be placed on the license of any person who has executed an anatomical gift form in accordance with this section.*

*Sec. 8. 33 V.S.A. § 2302(a) is amended to read:*

*(a) When requested in writing by a practicing physician, licensed and resident in this state, the officer having charge of the burial shall deliver the body of a deceased person to be buried under section 2301 of this title to the physician to be used by him or her for the advancement of anatomical science, unless:*

\* \* \*

*(6) The deceased person is known to have executed an anatomical gift document in accordance with the provisions of the Revised Uniform Anatomical Gift Act.*

*Sec. 9. REPEAL*

*Chapter 109 of Title 18 (Uniform Anatomical Gift Act) is repealed.*

*Sec. 10. EFFECTIVE DATE*

*This act shall take effect July 1, 2010.*