

AN ACT

RELATING TO ANATOMICAL GIFTS; ENACTING THE JONATHAN SPRADLING REVISED UNIFORM ANATOMICAL GIFT ACT; REVISING STATUTORY REFERENCES; RECOMPILING AND REPEALING SECTIONS OF THE UNIFORM ANATOMICAL GIFT ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 25 of this act may be cited as the "Jonathan Spradling Revised Uniform Anatomical Gift Act".

Section 2. DEFINITIONS.--As used in the Jonathan Spradling Revised Uniform Anatomical Gift Act:

A. "adult" means an individual who is at least sixteen years of age;

B. "agent" means an individual:

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

(2) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal;

C. "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;

D. "decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. "Decedent" includes a stillborn infant and, subject to restrictions imposed by law other than the Jonathan Spradling Revised Uniform Anatomical Gift Act, a fetus but not including a fetus that is the subject of an induced abortion;

E. "disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent or guardian of the individual who makes, amends, revokes or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. "Disinterested witness" does not include a person to which an anatomical gift could pass pursuant to Section 11 of the Jonathan Spradling Revised Uniform Anatomical Gift Act;

F. "document of gift" means a donor card or other record used to make an anatomical gift. "Document of gift" includes a statement or symbol on a driver's license, identification card or donor registry;

G. "donor" means an individual whose body or part is the subject of an anatomical gift;

H. "donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts;

I. "driver's license" means a license or permit issued by the motor vehicle division of the taxation and

revenue department to operate a vehicle, whether or not conditions are attached to the license or permit;

J. "eye bank" means a person that is licensed, accredited or regulated pursuant to federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or portions of human eyes;

K. "guardian" means a person appointed by a court to make decisions regarding the support, care, education, health or welfare of an individual. "Guardian" does not include a guardian ad litem;

L. "hospital" means a facility licensed as a hospital pursuant to the law of any state or a facility operated as a hospital by the United States, a state or a subdivision of a state;

M. "identification card" means an identification card issued by the motor vehicle division of the taxation and revenue department;

N. "know" means to have actual knowledge;

O. "minor" means an individual who is under eighteen years of age;

P. "organ procurement organization" means a person designated by the secretary of the federal department of health and human services as an organ procurement organization;

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

R. "part" means an organ, an eye or tissue of a human being. "Part" does not include the whole body;

S. "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;

T. "physician" means an individual authorized to practice medicine or osteopathy pursuant to the law of any state;

U. "power of attorney for health care" includes an advance health-care directive as defined in the Uniform Health-Care Decisions Act;

V. "procurement organization" means an eye bank, organ procurement organization or tissue bank;

W. "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.

"Prospective donor" does not include an individual who has made a refusal;

X. "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;

Y. "recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted;

Z. "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;

AA. "refusal" means a record created pursuant to Section 7 of the Jonathan Spradling Revised Uniform Anatomical Gift Act that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part;

BB. "sign" means, with the present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol;

or

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

CC. "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;

DD. "technician" means an individual determined to be qualified to remove or process parts by an appropriate

organization that is licensed, accredited or regulated pursuant to federal or state law. "Technician" includes an enucleator;

EE. "tissue" means a portion of the human body other than an organ or an eye. "Tissue" does not include blood unless the blood is donated for the purpose of research or education;

FF. "tissue bank" means a person that is licensed, accredited or regulated pursuant to federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of tissue; and

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

Section 3. APPLICABILITY.--The Jonathan Spradling Revised Uniform Anatomical Gift Act applies to an anatomical gift or amendment to, revocation of or refusal to make an anatomical gift, whenever made.

Section 4. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR'S DEATH.--Subject to the provisions of Section 8 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, 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 5 of

the Jonathan Spradling Revised Uniform Anatomical Gift Act by:

A. the donor, if the donor is an adult or if the donor is a minor and is:

(1) emancipated; or

(2) authorized pursuant to state law to apply for an instruction permit because the donor is at least fifteen years of age;

B. an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

C. a parent of the donor, if the donor is an unemancipated minor; or

D. the donor's guardian.

Section 5. 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 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 pursuant to Section 4 of the Jonathan Spradling Revised Uniform Anatomical Gift Act 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 shall:

(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 Paragraph (1) of this subsection.

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

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 anatomical gift.

Section 6. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE
DONOR'S DEATH.--

A. Subject to the provisions of Section 8 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, a donor or other person authorized to make an anatomical gift pursuant to Section 4 of that act may amend or revoke an anatomical gift by:

(1) a record signed by:

(a) the donor;

(b) the other person; or

(c) subject to the provisions of

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 Subparagraph (c) of Paragraph (1) of Subsection A of this section shall:

(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 Paragraph (1) of this subsection.

C. Subject to the provisions of Section 8 of the

Jonathan Spradling Revised Uniform Anatomical Gift Act, a donor or other person authorized to make an anatomical gift pursuant to Section 4 of that act 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.

Section 7. 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 the provisions of

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 Subparagraph (b) of Paragraph (1) of Subsection A of this section shall:

(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 Paragraph (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 5 of the Jonathan Spradling Revised Uniform Anatomical Gift Act 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 H of HJC/HB 1276
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Section 8 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, 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.

Section 8. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT OR REVOCATION.--

A. Except as otherwise provided in Subsection G of this section and subject to the provisions of 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 pursuant to Section 5 of the Jonathan Spradling Revised Uniform Anatomical Gift Act or an amendment to an anatomical gift of the donor's body or part pursuant to Section 6 of that act.

B. A donor's revocation of an anatomical gift of the donor's body or part pursuant to Section 6 of the Jonathan Spradling Revised Uniform Anatomical Gift Act is not a refusal and does not bar another person specified in Section 4 or 9 of that act from making an anatomical gift of the donor's body or part pursuant to Section 5 or 10 of that act.

C. If a person other than the donor makes an

unrevoked anatomical gift of the donor's body or part pursuant to Section 5 of the Jonathan Spradling Revised Uniform Anatomical Gift Act or an amendment to an anatomical gift of the donor's body or part pursuant to Section 6 of that act, another person may not make, amend or revoke the gift of the donor's body or part pursuant to Section 10 of that act.

D. A revocation of an anatomical gift of a donor's body or part pursuant to Section 6 of the Jonathan Spradling Revised Uniform Anatomical Gift Act by a person other than the donor does not bar another person from making an anatomical gift of the body or part pursuant to Section 5 or 10 of that act.

E. In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift pursuant to Section 4 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, 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 pursuant to Section 4 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, an anatomical gift of a part for one or more of the purposes set forth in Section 4 of that act 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 pursuant to Section 5 or 10 of that act.

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.

Section 9. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART.--

A. Subject to the provisions of Subsections B and C of this section and unless barred by Section 7 or 8 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, 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 pursuant to Subsection B of Section 4 of the Jonathan Spradling Revised Uniform Anatomical Gift Act immediately before the decedent's death;

(2) the spouse of the decedent unless legally separated or unless there is a pending action for

annulment, divorce, dissolution of marriage or separation;

(3) adult children of the decedent;

(4) parents of the decedent;

(5) adult siblings of the decedent;

(6) adult grandchildren of the decedent;

(7) grandparents of the decedent;

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

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

(10) 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 Paragraphs (1), (3), (4), (5), (6), (7) and (9) of Subsection A 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 pursuant to Section 11 of the Jonathan Spradling Revised Uniform Anatomical Gift Act 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

pursuant to Subsection A of this section is reasonably available to make or to object to the making of an anatomical gift.

Section 10. MANNER OF MAKING, AMENDING OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART.--

A. A person authorized to make an anatomical gift pursuant to Section 9 of the Jonathan Spradling Revised Uniform Anatomical Gift Act 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 the provisions of Subsection C of this section, an anatomical gift by a person authorized pursuant to Section 9 of the Jonathan Spradling Revised Uniform Anatomical Gift Act 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 pursuant to Section 9 of that act 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 pursuant to 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.

Section 11. 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 the provisions of Subsection B of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; and

(3) an eye bank or tissue bank.

B. If an anatomical gift to an individual pursuant to Paragraph (2) of Subsection A of this section cannot be transplanted into the individual, the part passes in

accordance with Subsection G of this section in the absence of

an express, contrary indication by the person making the anatomical gift.

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

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

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

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

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

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. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

E. If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in Subsection A of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection G of this section.

F. If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor" or "body donor", or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy and the gift passes in accordance with Subsection G of this section.

G. For purposes of Subsections B, E and F of this section the following rules apply:

(1) if the part is an eye, the gift passes to the appropriate eye bank;

(2) if the part is tissue, the gift passes to the appropriate tissue bank; and

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

H. An anatomical gift of an organ for

transplantation or therapy, other than an anatomical gift pursuant to Paragraph (2) of Subsection A of this section, passes to the organ procurement organization as custodian of the organ.

I. If an anatomical gift does not pass pursuant to Subsections A through H of this section or the decedent's body or part is not used for transplantation, therapy, research or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

J. A person may not accept an anatomical gift if the person knows that the gift was not effectively made pursuant to Section 5 or 10 of the Jonathan Spradling Revised Uniform Anatomical Gift Act or if the person knows that the decedent made a refusal pursuant to Section 7 of that act that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

K. Except as otherwise provided in Paragraph (2) of Subsection A of this section, nothing in the Jonathan Spradling Revised Uniform Anatomical Gift Act affects the allocation of organs for transplantation or therapy.

Section 12. 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 Paragraph (1) of Subsection A 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.

Section 13. 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 pursuant to Section 11 of the Jonathan Spradling Revised Uniform Anatomical Gift Act.

Section 14. 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 motor vehicle division of the taxation and revenue department and any 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 shall be allowed reasonable access to information in the records of the motor vehicle division of the taxation and revenue department 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 ensure 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 ensure the 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 the Jonathan Spradling Revised Uniform Anatomical Gift Act, at any time after a donor's death, the person to which a part passes pursuant to Section 11 of that act may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

E. Unless prohibited by law other than the Jonathan Spradling Revised Uniform Anatomical Gift Act, an examination pursuant to Subsection C or D of this section may include 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 pursuant to Subsection A of this section, a procurement organization shall make a reasonable search for any person listed in Section 9 of the Jonathan Spradling Revised Uniform Anatomical Gift Act

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 the provisions of Subsection I of Section 11 and Section 23 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, the rights of the person to which a part passes pursuant to Section 11 of that act 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 the Jonathan Spradling Revised Uniform Anatomical Gift Act, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes pursuant to Section 11 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, 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.

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.

Section 15. 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.

Section 16. SALE OR PURCHASE OF PARTS PROHIBITED.--

A. Except as otherwise provided in Subsection B of this section, a person who for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a third degree felony and upon conviction is subject to a fine not exceeding five thousand dollars (\$5,000) or imprisonment not exceeding six years, or both.

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

Section 17. OTHER PROHIBITED ACTS.--A person who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal, commits a third degree felony and upon conviction is subject to a fine not exceeding five thousand dollars (\$5,000) or imprisonment not exceeding six years, or both.

Section 18. IMMUNITY.--

A. A person that acts in accordance with the Jonathan Spradling Revised Uniform Anatomical Gift Act 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.

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 pursuant to the Jonathan Spradling Revised Uniform Anatomical Gift Act, a person may rely upon representations of an individual listed in Paragraph (2), (3), (4), (5), (6), (7) or (8) of Subsection A of Section 9 of that act relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Section 19. LAW GOVERNING VALIDITY--CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT--PRESUMPTION OF VALIDITY.--

A. A document of gift is valid if executed in accordance with:

(1) the Jonathan Spradling Revised Uniform Anatomical Gift Act;

(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 pursuant to 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.

Section 20. DONOR REGISTRY.--

A. The motor vehicle division of the taxation and revenue department shall establish a donor registry pursuant to the provisions of Subsection B of Section 66-5-10 NMSA 1978.

B. The motor vehicle division of the taxation and revenue department shall cooperate with a person that administers any donor registry that this state establishes, contracts for or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to or revocation of an anatomical gift.

C. A donor registry shall:

(1) allow a donor or other person authorized

pursuant to Section 4 of the Jonathan Spradling Revised Uniform Anatomical Gift Act to include on the donor registry a statement or symbol that the donor has made, amended or revoked an anatomical gift;

(2) be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift; and

(3) be accessible for purposes of Paragraphs (1) and (2) of this subsection seven days a week on a twenty-four-hour basis.

D. Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor or person who made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift.

E. This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry shall comply with the provisions of Subsections C and D of this section.

HEALTH-CARE DIRECTIVE.--

A. As used in this section:

(1) "advance health-care directive" means a power of attorney for health care, a health-care directive made pursuant to the provisions of the Uniform Health-Care Decisions Act or a record signed by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor;

(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; and

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

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

Section 22. COOPERATION BETWEEN OFFICE OF THE STATE MEDICAL INVESTIGATOR AND PROCUREMENT ORGANIZATION.--

A. The office of the state medical investigator shall cooperate with procurement organizations to maximize the

opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research or education.

B. If the office of the state medical investigator receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the office of the state medical investigator and a post-mortem examination is going to be performed, unless the office of the state medical investigator denies recovery in accordance with Section 23 of the Jonathan Spradling Revised Uniform Anatomical Gift Act, the office of the state medical investigator or its designee shall conduct a post-mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the anatomical gift.

C. A part may not be removed from the body of a decedent under the jurisdiction of the office of the state medical investigator for transplantation, therapy, research or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the office of the state medical investigator may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude the office of the state medical investigator from performing the medico-legal investigation upon the body or

parts of a decedent under the jurisdiction of the office of the state medical investigator.

Section 23. FACILITATION OF ANATOMICAL GIFT FROM DECEDENT WHOSE BODY IS UNDER JURISDICTION OF THE OFFICE OF THE STATE MEDICAL INVESTIGATOR.--

A. Upon request of a procurement organization, the office of the state medical investigator shall release to the procurement organization the name, contact information and available medical and social history of a decedent whose body is under the jurisdiction of the office of the state medical investigator. If the decedent's body or part is medically suitable for transplantation, therapy, research or education, the office of the state medical investigator shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the office of the state medical investigator only if relevant to transplantation or therapy.

B. The office of the state medical investigator may conduct a medico-legal investigation by reviewing all medical records, laboratory test results, x-rays, other diagnostic results and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the office of the state medical

investigator that the office of the state medical investigator determines may be relevant to the investigation.

C. A person that has any information requested by the office of the state medical investigator pursuant to Subsection B of this section shall provide that information as expeditiously as possible to allow the office of the state medical investigator to conduct the medico-legal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research or education.

D. If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the office of the state medical investigator and a post-mortem examination is not required, or the office of the state medical investigator determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the office of the state medical investigator and the procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research or education.

E. If an anatomical gift of a part from the decedent under the jurisdiction of the office of the state medical investigator has been or might be made, but the office of the state medical investigator initially believes that the

recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the office of the state medical investigator shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the office of the state medical investigator may allow the recovery.

F. Following the consultation pursuant to Subsection E of this section, in the absence of mutually agreed-upon protocols to resolve conflict between the office of the state medical investigator and the procurement organization, if the office of the state medical investigator intends to deny recovery, the office of the state medical investigator or its designee, at the request of the procurement organization, shall attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part. During the removal procedure, the office of the state medical investigator or its designee may allow recovery by the procurement organization to proceed, or, if the office of the state medical investigator or its designee reasonably believes that the part may be involved in determining the decedent's cause or manner of death, may deny recovery by the procurement organization.

G. If the office of the state medical investigator

or its designee denies recovery pursuant to Subsection F of this section, the office of the state medical investigator or its designee shall:

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

(2) include the specific reasons in the records of the office of the state medical investigator; and

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

H. If the office of the state medical investigator or its designee allows recovery of a part pursuant to Subsection D, E or F of this section, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the office of the state medical investigator with a record describing the condition of the part, a biopsy, a photograph and any other information and observations that would assist in the post-mortem examination.

I. If the office of the state medical investigator or its designee is required to be present at a removal procedure pursuant to Subsection F of this section, upon request the procurement organization requesting the recovery of the part shall reimburse the office of the state medical investigator or its designee for the additional costs incurred in complying with the provisions of Subsection F of this

section.

Section 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Jonathan Spradling Revised Uniform Anatomical Gift Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 25. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Jonathan Spradling Revised Uniform Anatomical Gift Act modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Section 26. Section 12-2-4 NMSA 1978 (being Laws 1993, Chapter 174, Section 1) is amended to read:

"12-2-4. DETERMINATION OF DEATH.--

A. For all medical, legal and statutory purposes, death occurs when an individual has sustained either:

(1) irreversible cessation of circulatory or respiratory functions; or

(2) irreversible cessation of all functions of the entire brain, including the brain stem.

B. A determination of death shall be made in

accordance with accepted medical standards.

C. Death is to be pronounced pursuant to the provisions of Subsection A of this section before artificial means of supporting circulatory or respiratory functions are terminated and before any vital organ is removed for purposes of transplantation, therapy, research or education in compliance with the provisions of the Jonathan Spradling Revised Uniform Anatomical Gift Act.

D. The definition of death set forth in Subsection A of this section is to be utilized for all purposes in this state, including civil and criminal actions, notwithstanding any other law to the contrary."

Section 27. Section 14-16-3 NMSA 1978 (being Laws 2001, Chapter 131, Section 3) is amended to read:

"14-16-3. SCOPE.--

(a) Except as otherwise provided in Subsection (b), the Uniform Electronic Transactions Act applies to electronic records and electronic signatures relating to a transaction.

(b) The Uniform Electronic Transactions Act does not apply to:

(1) a transaction to the extent it is governed by:

(i) a law governing the creation and execution of wills, codicils or testamentary trusts;

(ii) the Uniform Commercial Code, other than Sections 55-1-107 and 55-1-206 NMSA 1978 and Chapter 55, Articles 2 and 2A NMSA 1978; or

(iii) court orders, notices or official court documents, including briefs, pleadings and other records, required to be executed in connection with court proceedings;

(2) a notice concerning:

(i) the cancellation or termination of utility services, including water, heat or power services;

(ii) default, acceleration, repossession, foreclosure, eviction or the right to cure, under a credit agreement secured by or a rental agreement for a primary residence of an individual; or

(iii) the cancellation or termination of health insurance or benefits or life insurance or benefits, but not including annuities; or

(3) any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.

(c) The Uniform Electronic Transactions Act applies to an electronic record or electronic signature otherwise excluded from the application of that act under Subsection (b) to the extent it is governed by a law other than those specified in Subsection (b).

(d) A transaction subject to the Uniform Electronic Transactions Act is also subject to other applicable substantive law."

Section 28. Section 24-6A-7.1 NMSA 1978 (being Laws 2002, Chapter 42, Section 3) is recompiled in the Jonathan Spradling Revised Uniform Anatomical Gift Act and is amended to read:

"24-6A-7.1. DOCUMENT OF GIFT AS A LEGAL DOCUMENT.--A document of gift constitutes a legal document and has sufficient legal authority to be accepted by a designated or undesignated donee of anatomical gifts pursuant to the Jonathan Spradling Revised Uniform Anatomical Gift Act."

Section 29. Section 24-6A-9.1 NMSA 1978 (being Laws 2000, Chapter 54, Section 7) is recompiled in the Jonathan Spradling Revised Uniform Anatomical Gift Act and is amended to read:

"24-6A-9.1. IDENTIFICATION OF POTENTIAL DONORS.--

A. Each hospital in New Mexico, with the concurrence of its medical staff, shall develop by July 1, 2000 a protocol for identifying potential donors. The protocol shall be developed in collaboration with a procurement organization. The protocol shall provide that at or near the time of a patient's death and prior to the removal of life support, the hospital shall contact a procurement organization to determine the suitability of the patient as a

donor. The person designated by the hospital to contact the procurement organization shall have the following information available prior to making the contact:

- (1) the patient's identifier number;
- (2) the patient's age;
- (3) the cause of death; and
- (4) any past medical history available.

B. The procurement organization shall determine the suitability for donation. If the procurement organization determines that donation is not appropriate based on established medical criteria, that determination shall be noted by hospital personnel on the patient's record and no further action is necessary.

C. If the procurement organization determines that the patient is a suitable candidate for donation, the procurement organization shall initiate donor proceedings by making a reasonable search for a document of gift or other information identifying the patient as a donor or as a person who has refused to make an anatomical gift.

D. The hospital must have and implement written protocols that:

- (1) incorporate an agreement with a procurement organization under which the hospital must notify, in a timely manner, the procurement organization or a third party designated by the procurement organization of patients

whose deaths are imminent and prior to the removal of life support from a patient who has died in the hospital;

(2) ensure that the retrieval, processing, preservation, storage and distribution of tissues and eyes does not interfere with vascular organ procurement;

(3) ensure that the family of each potential donor is informed of its options to donate organs, tissues or eyes or to decline to donate. The person designated by the hospital to initiate the request to the family must be a procurement organization employee or a designated requester;

(4) encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the families of potential donors; and

(5) ensure that the hospital works cooperatively with the procurement organization in educating hospital staff on donation issues, reviewing death records to improve identification of potential donors and maintaining potential donors while necessary testing and placement of anatomical gifts take place.

E. Every hospital in the state shall establish a committee to develop and implement its organ and tissue donation policy and procedure to assist its staff in identifying and evaluating terminal patients who may be suitable organ or tissue donors. The committee shall include members of the administrative, medical and nursing staffs and

shall appoint a member to act as a liaison between the hospital and the state procurement organization."

Section 30. Section 24-6A-9.2 NMSA 1978 (being Laws 2000, Chapter 54, Section 6) is recompiled in the Jonathan Spradling Revised Uniform Anatomical Gift Act and is amended to read:

"24-6A-9.2. DEATH RECORD REVIEWS.--Every hospital shall work jointly with the appropriate procurement organization to conduct death record reviews at least annually. The procurement organization shall compile the results of the death record reviews and provide a report to the department of health by September 1 of each year; provided that the report to the department shall not identify hospitals, donors or recipients."

Section 31. Section 66-2-7.1 NMSA 1978 (being Laws 1995, Chapter 135, Section 4, as amended) is amended to read:

"66-2-7.1. MOTOR VEHICLE-RELATED RECORDS--
CONFIDENTIAL.--

A. It is unlawful for any department or bureau employee or contractor or for any former department or bureau employee or contractor to disclose to any person other than another employee of the department or bureau any personal information about an individual obtained by the department in connection with a driver's license or permit, the titling or registration of a vehicle, the administration of the Ignition

Interlock Licensing Act and the interlock device fund or an identification card issued by the department pursuant to the Motor Vehicle Code except:

(1) to the individual or the individual's authorized representative;

(2) for use by any governmental agency, including any court, in carrying out its functions or by any private person acting on behalf of the government;

(3) for use in connection with matters of motor vehicle and driver safety or theft; motor vehicle emissions; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; motor vehicle production alterations, recalls or advisories; and removal of non-owner records from original owner records of motor vehicle manufacturers;

(4) for use in research activities and for use in producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals;

(5) for use by any insurer or insurance support organization or by a self-insured entity or its agents, employees or contractors in connection with claims investigation activities, antifraud activities, rating or underwriting;

(6) for providing notice to owners of towed or impounded vehicles;

(7) for use by an employer or its agent or insurer in obtaining or verifying information relating to a holder of a commercial driver's license;

(8) for use by any requester if the requester demonstrates that it has obtained the written consent of the individual to whom the information pertains;

(9) for use by an insured state-chartered or federally chartered credit union; an insured state or national bank; an insured state or federal savings and loan association; or an insured savings bank, but only:

(a) to verify the accuracy of personal information submitted by an individual to the credit union, bank, savings and loan association or savings bank; and

(b) if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by pursuing legal remedies against or recovering on a debt or security interest from the individual;

(10) for providing organ donor information as provided in the Jonathan Spradling Revised Uniform Anatomical Gift Act or Section 66-5-10 NMSA 1978; or

(11) for providing the names and addresses of all lienholders and owners of record of abandoned vehicles

to storage facilities or wrecker yards for the purpose of providing notice as required in Section 66-3-121 NMSA 1978.

B. Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

Section 32. Section 66-5-10 NMSA 1978 (being Laws 1978, Chapter 35, Section 232, as amended) is amended to read:

"66-5-10. APPLICATION FOR LICENSE--INFORMATION--
TRANSFER TO LICENSE.--

A. Within the forms prescribed by the department for applications and licenses of drivers of motor vehicles, a space shall be provided to show whether the applicant is a donor as provided in the Jonathan Spradling Revised Uniform Anatomical Gift Act. Anyone applying for a license may, if the applicant desires, indicate the applicant's donor status on the space provided on the application, and this information, if given by an applicant, shall be shown upon the license issued. The form and driver's license shall be signed by the donor in the presence of a witness who shall also sign the form in the donor's presence. The department shall, as soon as practicable, include the following donor statement on the application form:

"I, _____, hereby make an

(Name of applicant/donor)

anatomical gift effective upon my death. A medical evaluation at the time of my death shall determine the organs and tissues suitable for donation.

(Signature of donor)

(Signature of parent or guardian is required if the donor is under fifteen years of age.)".

B. The department shall mark the donor status on each person's driver's license record and shall retain each application form or its image of a person who wishes to be a donor. The department shall create and maintain a statewide donor registry and shall provide on-line computer terminal access to the donor registry to organ procurement organizations and procurement organizations, as defined in the Jonathan Spradling Revised Uniform Anatomical Gift Act. Authorized hospital or organ and tissue donor program personnel, immediately prior to or after a donor's death, may request verification of the donor's status from the department and may obtain a copy of the application from the department."

Section 33. Section 66-5-401 NMSA 1978 (being Laws 1978, Chapter 35, Section 328, as amended) is amended to read:

"66-5-401. IDENTIFICATION CARDS.--

A. A person who does not have a valid New Mexico

driver's license may be issued an identification card by the department certified by the applicant as to true name, correct age and other identifying data as the department may require. Every application for an identification card shall be signed by the applicant or the applicant's parent or guardian. The secretary may, for good cause, revoke or deny the issuance of an identification card.

B. Within the forms prescribed by the department for identification card applications, a space shall be provided to show whether the applicant is a donor as provided in the Jonathan Spradling Revised Uniform Anatomical Gift Act. A person applying for an identification card may indicate that person's status on the space provided on the application. The donor status indicated by the applicant shall be displayed on the identification card. The form and identification card shall be signed by the donor in the presence of a witness who shall also sign the form in the donor's presence."

Section 34. Section 66-7-506.1 NMSA 1978 (being Laws 2000, Chapter 54, Section 11) is amended to read:

"66-7-506.1. DWI PREVENTION AND EDUCATION PROGRAM--ORGAN DONATION.--DWI prevention and education programs for instruction permits and driver's licenses shall include information on organ donation and the provisions of the Jonathan Spradling Revised Uniform Anatomical Gift Act."

Section 35. REPEAL.--Sections 24-6A-1 through

24-6A-6.1, 24-6A-7, 24-6A-8, 24-6A-9 and 24-6A-10 through 24-6A-15 NMSA 1978 (being Laws 1995, Chapter 116, Sections 1 through 6, Laws 2000, Chapter 54, Section 8 and Laws 1995, Chapter 116, Sections 7, 8, 9 and 10 through 15, as amended) are repealed.

Section 36. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2007.

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