CHAPTER 43

Dispositions of Human Bodies and Parts; Post‑Mortem Examinations

ARTICLE 1

General Provisions

**SECTION 44‑43‑10.** Applicability of implied warranties of merchantability and fitness.

 The implied warranties of merchantability and fitness are not applicable to a contract for the sale, procurement, processing, distribution, or use of human tissues including, but not limited to, corneas, bones or organs, whole blood, plasma, blood products, or blood derivatives. Human tissue, whole blood, plasma, blood products, and blood derivatives must not be considered commodities subject to sale or barter, and the transplanting, injection, transfusion, or other transfer of these substances into the human body are considered a medical service.

HISTORY: 1962 Code Section 32‑559; 1968 (55) 2670; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 1, eff May 6, 2009.

**SECTION 44‑43‑20.** Age restrictions for blood donors; parental permission.

 (A) A person may lawfully donate blood if he is:

 (1) at least seventeen years of age; or

 (2) sixteen years of age and has the written consent of his parent or guardian.

 (B) A person under eighteen years of age may not sell blood.

HISTORY: 1962 Code Section 32‑560; 1971 (57) 71; 1976 Act No. 549, Section 1; 2006 Act No. 334, Section 1, eff June 2, 2006; 2008 Act No. 186, Section 1, eff March 31, 2008; 2009 Act No. 4, Section 1, eff May 6, 2009.

**SECTION 44‑43‑30.** Donor gift forms and accompanying information.

 Whenever a person applies for the issuance, reissuance, or renewal of any class of driver's license, the Department of Motor Vehicles is authorized to furnish that person with a form, sufficient under the provisions of Article 5, the Revised Uniform Anatomical Gift Act, for the gift of all or part of the donor's body conditioned upon the donor's death and a document containing a summary description and explanation of the act. If a person who is legally authorized desires to execute such a gift, the department may provide that person with appropriate assistance and the presence of the legally required number of witnesses.

HISTORY: 1975 (59) 202; 1980 Act No. 347, Section 1; 1993 Act No. 181, Section 1105; 1996 Act No. 459, Section 66; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 1, eff May 6, 2009.

**SECTION 44‑43‑40.** Notification of donation on driver's license.

 Donations and gifts of all or part of a person's body made at the time of application, issuance, reissuance, or renewal of a driver's license pursuant to this chapter must be noted on the person's driver's license. After a driver's license has been issued, reissued, or renewed, the department shall issue to each person who has notified the department that he is a donor under the Revised Uniform Anatomical Gift Act a suitable emblem embedded within the person's driver's license to indicate his status as a donor. The department is not the registry of anatomical gifts.

HISTORY: 1975 (59) 202; 1980 Act No. 347, Section 2; 1984 Act No. 412, Section 1; 1998 Act No. 289, Section 1; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 1, eff May 6, 2009.

**SECTION 44‑43‑50.** Immunity.

 The Department of Motor Vehicles, its officers, and employees are immune from any civil liability for any acts or omissions in carrying out the provisions of Section 44‑43‑40.

HISTORY: 1984 Act No. 412, Section 2; 1993 Act No. 181, Section 1106; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 1, eff May 6, 2009.

ARTICLE 2

Bone Marrow Donor Program

**SECTION 44‑43‑60.** Citation of article.

 This article may be cited as the Bone Marrow Donor Act.

HISTORY: 1992 Act No. 505, Section 1; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑70.** Bone marrow donor programs established; purpose; dissemination of information; recruitment of donors.

 (A) Bone marrow donor programs are established within the Medical University of South Carolina and within the University of South Carolina, School of Medicine. The purpose of each program is to educate citizens of the State about:

 (1) the need for bone marrow donors;

 (2) the procedures required to become registered as a potential bone marrow donor, including the procedures for determining the person's tissue type; and

 (3) the medical procedures a donor must undergo to donate bone marrow.

 (B) Special efforts must be made to educate and recruit minorities to volunteer as potential bone marrow donors. Dissemination of information and recruitment of bone marrow donors may be accomplished through use of the press, radio, and television, through the placement of educational materials in appropriate health care facilities, blood banks, and state and local agencies, and through any other means of public dissemination. The Medical University of South Carolina and the University of South Carolina, School of Medicine, in conjunction with the Department of Motor Vehicles, shall make educational materials available at all places where drivers' licenses are issued or renewed.

HISTORY: 1992 Act No. 505, Section 1; 1993 Act No. 181, Section 1107; 1996 Act No. 459, Section 67; 1998 Act No. 289, Section 2; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑80.** Paid leaves of absence to employees to donate bone marrow.

 (A) An employer may grant paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. As used in this section, "employer" means a person or entity that employs twenty or more employees at least at one site within this State and includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, city, or other governmental subdivision. "Employee" means a person who performs services for hire for an employer for an average of twenty or more hours a week and includes all individuals employed at a site owned or operated by an employer but does not include an independent contractor.

 (B) The combined length of paid leaves of absence requested by an employee must be determined by the employee but may not exceed forty work hours unless the employer agrees to a longer period of time. The employer may require verification by a physician of the purpose and length of each paid leave of absence requested by the employee to donate bone marrow. If there is a medical determination that the employee does not qualify as a bone marrow donor, the paid leave of absence granted to the employee before that medical determination is not forfeited.

 (C) An employer may not retaliate against an employee for requesting or obtaining a paid leave of absence as provided by this section.

 (D) This section does not prevent an employer from providing a paid leave of absence for bone marrow donations in addition to leave allowed under this section. This section does not affect an employee's rights with respect to any other employment benefit.

HISTORY: 1992 Act No. 505, Section 1; 2006 Act No. 334, Section 1, eff June 2, 2006.

ARTICLE 5

Revised Uniform Anatomical Gift Act

**SECTION 44‑43‑300.** Citation of article.

 This article may be cited as the "Revised Uniform Anatomical Gift Act".

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑305.** Definitions.

 As used in this article:

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

 (2) "Agent" means an individual:

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

 (5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 44‑43‑350.

 (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, identification card, or 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 contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

 (9) "Driver's license" means a license or permit issued by the 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 hospital licensed, accredited, or approved under the laws of this State and includes a hospital operated by the United States or the State or its subdivisions, although not required to be licensed under state law.

 (13) "Identification card" means an identification card issued by the Department of Motor Vehicles.

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

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

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

 (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, organ procurement organization, or 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 44‑43‑330 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.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑310.** Applicability of article.

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

HISTORY: 1962 Code Section 32‑720; 1969 (56) 625; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑315.** Parties authorized to make anatomical gifts.

 Subject to Section 44‑43‑335, 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 44‑43‑320 by:

 (1) the donor, if the donor is an adult or if the donor is a minor and is at least sixteen years of age;

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

 (3) a parent of the donor, if the donor is less than sixteen years of age; or

 (4) the donor's guardian.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑320.** Methods of making anatomical gifts.

 (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 oral or written communication addressed to at least two adults, at least one of whom is a disinterested witness; or

 (4) as provided in subsection (B).

 (B) A donor or other person authorized to make an anatomical gift under Section 44‑43‑315 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 item (1).

 (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 gift.

HISTORY: 1962 Code Section 32‑711; 1969 (56) 625; 1998 Act No. 290, Section 2; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑325.** Amendment or revocation of anatomical gift.

 (A) Subject to Section 44‑43‑335, a donor or other person authorized to make an anatomical gift under Section 44‑43‑315 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), 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 subsection (A)(1)(c) 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 item (1).

 (C) Subject to Section 44‑43‑335, a donor or other person authorized to make an anatomical gift under Section 44‑43‑315 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).

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑330.** Refusal to make anatomical gift; documentation.

 (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), 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 while competent 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 subsection (A)(1)(b) 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 item (1).

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

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

 (2) by subsequently making an anatomical gift pursuant to Section 44‑43‑320 that is inconsistent with the refusal; or

 (3) by destroying or cancelling 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 Section 44‑43‑335(H), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

HISTORY: 1962 Code Section 32‑712; 1969 (56) 625; 1992 Act No. 306, Section 2; 1998 Act No. 289, Section 5; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑335.** Amendment or revocation by person other than donor of anatomical gift made by donor.

 (A) Except as otherwise provided in subsection (G) and subject to subsection (F), 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 44‑43‑320 or an amendment to an anatomical gift of the donor's body or part under Section 44‑43‑325.

 (B) A donor's revocation of an anatomical gift of the donor's body or part under Section 44‑43‑325 is not a refusal and does not bar another person specified in Section 44‑43‑315 or 44‑43‑340 from making an anatomical gift of the donor's body or part under Section 44‑43‑320 or 44‑43‑345.

 (C) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 44‑43‑320 or an amendment to an anatomical gift of the donor's body or part under Section 44‑43‑325, another person may not make, amend, or revoke the gift of the donor's body or part under Section 44‑43‑345.

 (D) A revocation of an anatomical gift of a donor's body or part under Section 44‑43‑325 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 44‑43‑320 or 44‑43‑345.

 (E) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 44‑43‑315, 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 44‑43‑315, an anatomical gift of a part for one or more of the purposes set forth in Section 44‑43‑315 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 44‑43‑320 or 44‑43‑345.

 (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.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑340.** Parties authorized to make anatomical gift of decedent's body or part.

 (A) Subject to subsections (B) and (C) and unless barred by Section 44‑43‑330 or 44‑43‑335, 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 attorney‑in‑fact appointed by the decedent in a durable power of attorney executed pursuant to Section 62‑5‑501, if the decision is within the scope of his authority;

 (2) a spouse of the decedent unless the spouse and the decedent are separated pursuant to one of the following:

 (a) entry of a pendente lite order in a divorce or separate maintenance action;

 (b) formal signing of a written property or marital settlement agreement;

 (c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the spouse and the decedent;

 (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 authorized or under obligation to dispose of the body.

 (B) If there is more than one member of a class listed in subsection (A)(1), (3), (4), (5), (6), (7), or (9) 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 44‑43‑350 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) is reasonably available to make or to object to the making of an anatomical gift.

HISTORY: 1962 Code Section 32‑713; 1969 (56) 625; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑345.** Gift of decedent's body or part; documentation; revocation.

 (A) A person authorized to make an anatomical gift under Section 44‑43‑340 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), an anatomical gift by a person authorized under Section 44‑43‑340 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 44‑43‑340 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) 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, physician, or technician knows of the revocation.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑350.** Authorized recipients of anatomical gifts.

 (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), 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 item (2) of subsection (A) cannot be transplanted into the individual, the part passes in accordance with subsection (G) 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), 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), 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 must 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) 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).

 (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).

 (G) For purposes of subsections (B), (E), and (F) 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 item (2) of subsection (A), 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) 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 44‑43‑320 or 44‑43‑345, or if the person knows that the decedent made a refusal under Section 44‑43‑330, that was not revoked. For purposes of the 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 item (2) of subsection (A), nothing in this article affects the allocation of organs for transplantation or therapy.

HISTORY: 1962 Code Section 32‑714; 1969 (56) 625; 1998 Act No. 289, Section 6; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑355.** Duty to send document of gift or refusal to hospital; sanctions.

 (A) A person who finds or is in possession of a document of gift or of refusal that was executed by an individual who the person reasonably believes is dead or near death shall, if the individual is taken to a hospital, send the document of gift or refusal to the hospital.

 (B) 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.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑360.** Delivery of document of gift upon or after individual's death; examination and copying.

 (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 44‑43‑350.

HISTORY: 1962 Code Section 32‑715; 1969 (56) 625; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑365.** Search of South Carolina Organ and Tissue Donor Registry; examination to ensure medical suitability of part; minor donors; removal of part.

 (A) When a hospital refers an individual at or near death to a procurement organization, the organization shall cause a reasonable search to be made of the records of the South Carolina Organ and Tissue Donor Registry to ascertain whether the individual has made an anatomical gift.

 (B) A procurement organization must be allowed reasonable access to information in the records of the South Carolina Organ and Tissue Donor Registry 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 this article, at any time after a donor's death, the person to which a part passes under Section 44‑43‑350 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 this article, an examination under subsection (C) or (D) 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 under subsection (A), a procurement organization shall make a reasonable search for any person listed in Section 44‑43‑340 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 promptly shall advise the other person of all relevant information.

 (H) Subject to Sections 44‑43‑350(I) and 44‑43‑405, the rights of the person to which a part passes under Section 44‑43‑350 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 article, 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 44‑43‑350, 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.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑370.** Agreements or affiliations between hospitals and procurement organizations.

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

HISTORY: 1962 Code Section 32‑716; 1969 (56) 625; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑375.** Purchase or sale of part to be removed after individual's death; penalty; exception.

 (A) Except as otherwise provided in subsection (B), a person that 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 felony and, upon conviction, must be fined not more than fifty thousand dollars or imprisoned not more than five 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.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑380.** Falsification of document of gift or refusal for financial gain; penalty.

 A person that, 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 felony and, upon conviction, must be fined not more than fifty thousand dollars or imprisoned not more than five years, or both.

HISTORY: 1962 Code Section 32‑717; 1969 (56) 625; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑385.** Immunity.

 (A) A person that acts in good faith in accord with the terms of this article, or under the anatomical gift laws of another state, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act. However, immunity from civil liability does not extend to cases of provable malpractice on the part of a physician, surgeon, or technician.

 (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 article, a person may rely upon representations of an individual listed in Section 44‑43‑340 (A)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑390.** Validity and interpretation of document of gift; presumption of validity.

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

 (1) this article;

 (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.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑395.** Resolution of conflict between anatomical gift and declaration or advance health care directive.

 (A) For purposes of this section:

 (1) "Advance health care directive" means a power of attorney for health care or a record signed or authorized 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.

 (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 health care directive and the terms of the declaration or 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 directive, or, if none or the agent is not reasonably available, another person authorized by law other than this article 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 expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 44‑43‑340. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end‑of‑life care.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑400.** Body under jurisdiction of coroner; cooperation between coroner and procurement organization.

 (A) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

 (B) A part may not be removed from the body of a decedent under the jurisdiction of a coroner 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 coroner 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 a coroner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

HISTORY: 1962 Code Section 32‑719; 1969 (56) 625; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑405.** Anatomical gifts from bodies under jurisdiction of coroner.

 (A) Upon request of a procurement organization, a coroner 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 coroner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner 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 coroner only if relevant to transplantation or therapy.

 (B) The coroner may conduct a medicolegal examination 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 coroner which the coroner determines may be relevant to the investigation.

 (C) A person that has any information requested by a coroner pursuant to subsection (B) shall provide that information as expeditiously as possible to allow the coroner to conduct the medicolegal 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 coroner and a post‑mortem examination is not required, or the coroner 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 coroner and 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 coroner has been or might be made, but the coroner 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 coroner shall consult with the forensic pathologist and the procurement organization about the proposed recovery. After consultation, the coroner may allow the recovery.

 (F) If the coroner or designee allows recovery of a part under subsection (D), or (E), the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner 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.

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑410.** Construction of article.

 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. This article must be liberally construed to effectuate the wishes of the donor.

HISTORY: 1998 Act No. 290, Section 1; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 2, eff May 6, 2009.

**SECTION 44‑43‑415.** Modification of Electronic Signatures in Global and National Commerce Act.

 This article 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).

HISTORY: 2009 Act No. 4, Section 2, eff May 6, 2009.

ARTICLE 6

Uniform Determination of Death Act

**SECTION 44‑43‑450.** Short title.

 This act may be cited as the Uniform Determination of Death Act.

HISTORY: 1984 Act No. 339, Section 1; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑460.** When individual is deemed to be dead; standards applicable to determination.

 An individual who has sustained irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

HISTORY: 1984 Act No. 339, Section 2; 2006 Act No. 334, Section 1, eff June 2, 2006.

ARTICLE 7

Distribution of Dead Bodies for Scientific Purposes

**SECTION 44‑43‑510.** Board for distribution and delivery of dead human bodies; composition.

 The faculty members of the departments of anatomy and surgery of the Medical University of South Carolina and the University of South Carolina, School of Medicine, or any other colleges or schools of this State authorized by law to teach medical science and issue diplomas, constitute a board for the distribution and delivery of dead human bodies as and for the purpose provided in this article.

HISTORY: 1962 Code Section 9‑501; 1952 Code Section 9‑501; 1942 Code Section 3443; 1932 Code Section 3443; Civ. C. '22 Section 1052; Civ. C. '12 Section 929; 1909 (26) 166; 1952 (47) 1875; 1998 Act No. 289, Section 7; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑520.** Adoption of rules and regulations; records.

 The board may adopt rules and promulgate regulations for its government and the proper discharge of its functions. The board shall keep a record of its proceedings and particularly of all bodies received and distributed. These records must be open at all times to the inspection of each member of the board and the Attorney General and the solicitor of each circuit in the State.

HISTORY: 1962 Code Section 9‑502; 1952 Code Section 9‑502; 1942 Code Sections 3443, 3444; 1932 Code Sections 3443, 3444; Civ. C. '22 Sections 1052, 1053; Civ. C. '12 Sections 929, 930; 1909 (26) 166; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑530.** Dead bodies available to board; notification of availability.

 Each officer, agent, and servant of every city in the State and of every almshouse, prison, morgue, hospital, jail, or other public institution in cities having charge or control of any dead human body that is required to be buried at the public expense and every officer or other person having charge or control of the body of any person upon whom the sentence of death for crime has been executed under the law shall notify the board, or the person or persons as may, from time to time, be designated by the board or the board's authorized officer or agent, whenever and as soon as a body comes to the person's possession, charge, or control and shall, without fee or reward, deliver the body and permit the board and its agents, and physicians and surgeons as may, from time to time, be designated by the board, to take and remove the body to be used for the advancement of medical science.

HISTORY: 1962 Code Section 9‑503; 1952 Code Section 9‑503; 1942 Code Section 3445; 1932 Code Section 3445; Civ. C. '22 Section 1054; Civ. C. '12 Section 931; 1909 (26) 166; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑540.** Dead bodies not available to board.

 Notice is not required to be given and a body must not be delivered if a person claiming to be, and satisfying the authorities in charge of the body that he is, of kin or related by marriage to the deceased claims the body for burial and pays the burial expenses; and notice is not required to be given for the body to be delivered if the deceased was a traveler who died suddenly.

HISTORY: 1962 Code Section 9‑504; 1952 Code Section 9‑504; 1942 Code Section 3445; 1932 Code Section 3445; Civ. C. '22 Section 1054; Civ. C. '12 Section 931; 1909 (26) 166; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑550.** Distribution of bodies.

 The bodies received must be distributed by the board to and among medical colleges and schools of the State and physicians and surgeons as the board may designate. The colleges and schools first must be supplied with bodies needed for lectures and demonstration. The remaining bodies must be distributed equitably among the physicians and surgeons; however, in equitable distribution of the bodies, the physicians and surgeons of the city where the death of the person took place have prior right to receive the body. The board, instead of by themselves or through their agents receiving and delivering bodies, may, from time to time, either directly or by their officers or agents, designate physicians and surgeons to receive the bodies and the number each shall receive. For the purpose of the distribution contemplated by this section, a body must be held, subject to the order of the board or its authorized agent, in the city where death occurs not less than twenty‑four hours.

HISTORY: 1962 Code Section 9‑505; 1952 Code Section 9‑505; 1942 Code Section 3446; 1932 Code Section 3446; Civ. C. '22 Section 1055; Civ. C. '12 Section 932; 1909 (26) 166; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑560.** Conveyance of bodies.

 The board may employ a carrier or carriers for conveyance of bodies, which must be well enclosed in a suitable case and carefully deposited, free from public observation. Every carrier shall obtain a receipt by name or, if the person be unknown, by a description for each body delivered by the carrier and deposit the receipt with the board or its authorized agent. After the bodies have been sufficiently used for the purposes of instruction, the bodies must be decently and respectfully disposed of by the university, college, physicians, or surgeons, as the case may be, receiving them.

HISTORY: 1962 Code Section 9‑506; 1952 Code Section 9‑506; 1942 Code Section 3447; 1932 Code Section 3447; Civ. C. '22 Section 1056; Civ. C. '12 Section 933; 1909 (26) 166; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑580.** Trafficking in dead bodies; penalty; authorization to traffic in anatomical material and pathological specimens.

 (A) It is unlawful for a person to sell or buy a dead human body or in any way to traffic in dead human bodies.

 (B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or, in the discretion of the court, be imprisoned not more than one year; however, the board may, on the application of any person, empower that person to import into this State and traffic in anatomical material and pathological specimens as the board may designate.

HISTORY: 1962 Code Section 9‑508; 1952 Code Section 9‑508; 1942 Code Sections 1373, 3448; 1932 Code Sections 1373, 3448; Civ. C. '22 Section 1057; Cr. C. '22 Section 276; Civ. C. '12 Section 934; 1909 (26) 166; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑590.** Penalties.

 If a person fails or refuses to perform any duty imposed upon him by this article the person must, for every failure or refusal, be fined not less than one hundred or more than five hundred dollars.

HISTORY: 1962 Code Section 9‑509; 1952 Code Section 9‑509; 1942 Code Section 3448‑1; 1932 Code Section 1500; Cr. C. '22 Section 448; Cr. C. '12 Section 403; 1909 (26) 166; 2006 Act No. 334, Section 1, eff June 2, 2006.

ARTICLE 9

Post‑Mortem Examinations

**SECTION 44‑43‑710.** Consent; who may give consent.

 A pathologist or a licensed physician or surgeon may conduct a postmortem examination on a dead human body when consent is given in writing by the person prior to his death or when consent is given by the spouse of the deceased; but if the spouse at the time of death was living apart from the deceased, or, if there is no spouse surviving, the consent may be given by whichever one of the next of kin, as determined by law of this State, assumes custody of the body for burial purposes; however, the autopsy must not be performed under a consent given by a person if, before the autopsy is performed, any other next of kin objects in writing to the person by whom the autopsy is to be performed. If two or more persons assume custody of the body, consent of one of them is sufficient. If no next of kin assumes custody of the body for burial purposes, consent may be given by the person who assumes custody of the body for burial. If all of the next of kin are minors, the consent of a minor who is sixteen years of age or older is sufficient. A consent purporting to have been given by a person authorized to give consent is conclusively presumed to have been given by the person.

HISTORY: 1962 Code Section 32‑558; 1967 (55) 370; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑720.** Consent required for certain autopsies and postmortem examinations; use of body parts restricted; form of consent.

 (A) Except for an autopsy or postmortem examination ordered by a coroner or medical examiner, no autopsy or postmortem examination may be performed unless the person authorizing the autopsy or postmortem examination has given informed consent to the procedure. The person giving the informed consent must be given the opportunity to give informed consent and authorize the procedure on a witnessed, written consent form using language understandable to the average lay person after face‑to‑face communication with a physician about the procedure. If the person authorizing the procedure is unable to consent in person, consent may be given through a recorded telephonic communication.

 (B) In performing an autopsy or postmortem examination, no body parts, as defined in Section 44‑43‑320, removed from the body may be used for any purpose other than to determine the cause or manner of death unless the person authorizing the autopsy or postmortem examination has given informed consent to the procedure. The person giving the informed consent must be given the opportunity to give informed consent on a witnessed, written consent form using language understandable to the average lay person after face‑to‑face communication with a physician about the procedure. If the person authorizing the procedure is unable to consent in person, consent may be given through a recorded telephonic communication.

HISTORY: 1996 Act No. 419, Section 1; 2006 Act No. 334, Section 1, eff June 2, 2006.

**SECTION 44‑43‑730.** Right to have autopsy performed when patient dies in a hospital or health care facility.

 If a patient dies in a hospital or a health care facility where invasive surgical procedures are performed, the person authorized to consent, as determined in accordance with Section 44‑43‑710, has the right to have an autopsy performed. The hospital or health care facility where invasive surgical procedures are performed, in writing, shall inform the person authorized to consent of this right. The notification must inform the person that if there is a charge for the autopsy the cost is to be paid by a private source.

HISTORY: 2010 Act No. 226, Section 2, eff July 1, 2010.

Editor's Note

2010 Act No. 226, Section 1, provides:

"This act may be cited as the 'Ann S. Perdue Independent Autopsy Fairness Act of 2010'."

ARTICLE 11

Hospital Policy and Protocol for Organ and Tissue Donation

**SECTION 44‑43‑910.** Definitions.

 As used in this article:

 (1) "Hospital" means a hospital licensed, accredited, or approved under the laws of this State and includes a hospital operated by the United States or the State or its subdivisions, although not required to be licensed under state law.

 (2) "Potential organ or tissue donor" means a person who has died or is dying.

 (3) "Organ and Tissue Procurement Organization" means the organ procurement organization designated to perform organ recovery services in South Carolina by the United States Department of Health and Human Services which also has the capability to procure tissue.

HISTORY: 1991 Act No. 29, Section 1; 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑920.** Organ and tissue donor policies and continuing education.

 A hospital shall establish policies on organ and tissue donation, as well as on related continuing education, in accordance with applicable federal and state laws and regulations.

HISTORY: 1991 Act No. 29, Section 1; 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑930.** Notification of organ procurement organization.

 When death is imminent or has occurred, the hospital shall notify the organ procurement organization in a timely manner in accordance with applicable federal and state laws and regulations.

HISTORY: 1991 Act No. 29, Section 1; 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑940.** Collaboration in support of donation process.

 All relevant hospital administration and staff shall collaborate with the organ and tissue procurement organization in a cooperative effort to support and promote the donation process.

HISTORY: 1991 Act No. 29, Section 1; 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑945.** Determination of appropriateness of donation; contacting person authorized to give consent.

 (A) If upon referral of a potential organ or tissue donor, the organ and tissue procurement organization determines that the donation is not appropriate based on established medical criteria, this determination must be noted by hospital personnel on the patient's record. Within two hours of this determination and the deceased patient's next‑of‑kin designating a funeral director, the hospital shall notify the funeral director of this designation and when the body of the deceased will be made available to the funeral director.

 (B) If the organ and tissue procurement organization determines that the patient is a suitable candidate for organ or tissue donation, a representative of the organ and tissue procurement organization shall contact the appropriate person authorized to consent to the donation pursuant to Section 44‑43‑340.

 (C) Discretion and sensitivity to family circumstances and religious beliefs must be used in all contacts with family members regarding organ and tissue donation.

HISTORY: 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑950.** Consent.

 As provided in Section 44‑43‑340, persons in the stated order of priority may give consent for organ or tissue donation.

HISTORY: 1991 Act No. 29, Section 1; 1992 Act No. 306, Section 7; 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑960.** Permission of, or referral by, medical examiner or coroner.

 If a death is under the jurisdiction of the coroner or medical examiner, as provided in Section 17‑5‑530, written or verbal permission must be obtained by the organ and tissue procurement organization from the coroner or medical examiner before organ or tissue recovery. A coroner or medical examiner should refer to the designated organ and tissue procurement organization in South Carolina as a potential donor a person whose death occurs outside of a hospital.

HISTORY: 1991 Act No. 29, Section 1; 1998 Act No. 289, Section 8; 2001 Act No. 73, Section 6, eff July 20, 2001; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑970.** Exclusive agency for receipt of referrals and donations.

 (A) LifePoint, Inc. within the territory designated pursuant to federal law, is the exclusive agency to receive potential organ donor referrals and organ donations and tissue referrals and tissue donations so long as this entity remains and is certified by the Centers for Medicare and Medicaid Services and abides by the regulations of the Organ Procurement Transplantation Network and the United Network for Organ Sharing or its successor.

 (B) LifePoint, Inc. annually by April first shall submit a report to the General Assembly concerning its activities and the incidence of organ and tissue donation.

HISTORY: 1991 Act No. 29, Section 1; 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑985.** Fees.

 The organ and tissue procurement organization may not assess a charge, fee, or cost against another procurement agency for referral of an organ or tissue donor. However, reasonable charges for related services pursuant to contractual relationships are permissible.

HISTORY: 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑1000.** Documentation required in medical records of patients identified as potential donors.

 The following must be documented in the medical records of patients identified as potential organ or tissue donors:

 (1) why a family is not contacted to request organ or tissue donation;

 (2) when a family is contacted to request organ or tissue donation and the outcome of the contact;

 (3) disposition of a referral to a procurement agency, including acceptance or rejection by the agency. The appropriate procurement agency shall notify the referring hospital of the disposition;

 (4) other documentation as may be required by federal or state law or regulation.

HISTORY: 1991 Act No. 29, Section 1; 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑1010.** Costs pertaining to donation paid by procurement agency.

 All hospital and physician charges following declaration of death that pertain to organ and tissue donation must be paid by the appropriate procurement agency and must not be charged to the donor's estate. Procurement costs incurred by the agency must not be charged to the donor's estate.

HISTORY: 1991 Act No. 29, Section 1; 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

**SECTION 44‑43‑1015.** Death record reviews.

 Each hospital shall work collaboratively with the organ and tissue procurement organization in conducting periodic death record reviews.

HISTORY: 1998 Act No. 289, Section 8; 2006 Act No. 334, Section 1, eff June 2, 2006; 2009 Act No. 4, Section 3, eff May 6, 2009.

ARTICLE 13

Donate Life South Carolina

**SECTION 44‑43‑1310.** Donate life South Carolina established; purpose.

 There is established Donate Life South Carolina, an eleemosynary corporation, the resources of which must be used to promote and encourage organ and tissue donation and education and to assess and assist with the needs of transplant recipients in South Carolina. Donate Life may accept gifts, bequests, and grants from individuals, foundations, organizations, associations, and any other source. Donate Life supplements and augments services provided by state agencies and does not take the place of these services.

HISTORY: 1996 Act No. 262, Section 3; 2006 Act No. 334, Section 1, eff June 2, 2006; 2007 Act No. 92, Section 1, eff June 14, 2007.

**SECTION 44‑43‑1320.** Administration; board of directors.

 (A) Donate Life South Carolina is to be administered by a board of directors appointed by the Governor, with the advice and consent of the Senate, and is composed of:

 (1) one representative from a civic organization that promotes organ or tissue donation or both;

 (2) four members representing organ and tissue recipients, families of recipients, and families of donors who are residents of South Carolina; of these four members, one each must represent the Lowcountry, Pee Dee, Midlands, and Piedmont regions of the State;

 (3) one forensic pathologist who is a resident of and who is licensed to practice medicine in South Carolina;

 (4) four at‑large members who have demonstrated an interest in organ and tissue donation and education and who are residents of this State.

 (B) Members shall serve terms of four years and until successors are appointed and qualify. A board member may be removed by the Governor in accordance with Section 1‑3‑240(B). Members may serve no more than two full terms, except that there is no limit to the number of terms that a forensic pathologist may serve. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

HISTORY: 1996 Act No. 262, Section 3; 1998 Act No. 289, Section 9; 2006 Act No. 334, Section 1, eff June 2, 2006; 2007 Act No. 92, Section 1, eff June 14, 2007.

**SECTION 44‑43‑1330.** Reimbursement of expenses of board numbers.

 Board members are not entitled to per diem but may be reimbursed for mileage and all necessary and reasonable expenses incurred in the performance of their duties under this article.

HISTORY: 1996 Act No. 262, Section 3; 2006 Act No. 334, Section 1, eff June 2, 2006; 2007 Act No. 92, Section 1, eff June 14, 2007.

**SECTION 44‑43‑1340.** Authority of trust fund board; particular powers.

 In administering this article, the board is authorized, but not limited to:

 (1) develop and implement educational programs and campaigns to increase organ and tissue donation in South Carolina;

 (2) make policy recommendations for the promotion of organ and tissue donation in South Carolina;

 (3) assess the needs of transplant recipients and establish priorities and develop goals and objectives to assist transplant recipients who are residents of South Carolina;

 (4) determine how the monies in the fund are to be disbursed;

 (5) acquire and hold property;

 (6) invest trust monies, including pooled investment funds maintained by the State;

 (7) utilize local resources including volunteers when appropriate.

HISTORY: 1996 Act No. 262, Section 3; 2006 Act No. 334, Section 1, eff June 2, 2006; 2007 Act No. 92, Section 1, eff June 14, 2007.

**SECTION 44‑43‑1350.** Election of chairman; adoption of rules; meetings; quorum.

 The board shall elect a chairman from among its members and shall adopt rules for the governance of its operations. The board shall meet at least semiannually. Six members constitute a quorum.

HISTORY: 1996 Act No. 262, Section 3; 2006 Act No. 334, Section 1, eff June 2, 2006; 2007 Act No. 92, Section 1, eff June 14, 2007.

**SECTION 44‑43‑1360.** Administration of article.

 The board may employ a director and other staff as necessary to carry out the provisions of this article; however, administration of this article may not exceed twenty percent of the total funds credited to Donate Life South Carolina, excluding the administrative fee paid to the Department of Revenue pursuant to Sections 12‑6‑5065 and 56‑1‑143.

HISTORY: 1996 Act No. 262, Section 3; 2006 Act No. 334, Section 1, eff June 2, 2006; 2007 Act No. 92, Section 1, eff June 14, 2007.

**SECTION 44‑43‑1370.** Uses of resources.

 Funds credited to Donate Life South Carolina, excluding the administrative fees paid to the Department of Revenue, may be used for, but are not limited to:

 (1) administration of this article including, but not limited to, personnel and board expenses;

 (2) development and promotion of organ and tissue donor public awareness educational programs in cooperation with LifePoint, Inc., and the United Network for Organ Sharing;

 (3) encouraging the incorporation of organ and tissue donation education into the medical and nursing school curriculums of the Medical University of South Carolina and the University of South Carolina, School of Medicine; if funds are provided to a university for this educational purpose, the university annually shall conduct a survey to determine if attitudes of its students and graduates have been altered by the curriculum. The results of the survey must be submitted to Donate Life;

 (4) a reserve fund in an interest‑bearing account with five percent of the funds received by Donate Life annually to be placed in this account. No withdrawals may be made from this account until the minimum balance has reached one hundred thousand dollars and then these funds may only be used in years in which donations do not meet the average normal operating cost incurred by Donate Life and funds are needed to meet expenses. Once the balance in the reserve funds reaches one hundred thousand dollars, excess funds earned by interest and yearly allocations may be used at the discretion of the board to cover operating costs and to provide additional funds.

HISTORY: 1996 Act No. 262, Section 3; 2006 Act No. 334, Section 1, eff June 2, 2006; 2007 Act No. 92, Section 1, eff June 14, 2007.

**SECTION 44‑43‑1380.** Annual report of board to General Assembly.

 Donate Life South Carolina board annually by February first shall submit a report to the General Assembly concerning its expenditures of funds, activities, and the incidence of organ and tissue donation.

HISTORY: 1996 Act No. 262, Section 3; 2006 Act No. 334, Section 1, eff June 2, 2006; 2007 Act No. 92, Section 1, eff June 14, 2007.

ARTICLE 14

Organ and Tissue Donor Registry

**SECTION 44‑43‑1410.** Donor registry established; membership; terms.

 (A) There is established the South Carolina Organ and Tissue Donor Registry which must be exclusively administered by Donate Life South Carolina. The registry shall include individuals who have indicated a willingness to be an organ and tissue donor by a designation on a driver's license, state identification card, donor card, online, or any other donor registry form or any other document of gift.

 (B) The purpose of the registry is to:

 (1) facilitate the recovery of anatomical gifts for transplantation, therapy, research, and education;

 (2) collect data to develop and evaluate the effectiveness of educational initiatives promoting organ and tissue donation.

HISTORY: 2007 Act No. 92, Section 2, eff June 14, 2007.

**SECTION 44‑43‑1420.** Development of procedures for obtaining donor registrants.

 Donate Life South Carolina shall develop procedures for collecting organ and tissue donor registrants from existing databases including, but not limited to, obtaining donor information from the driver's license data bank maintained by the Department of Motor Vehicles. Donate Life also may develop other procedures including, but not limited to, establishing online donor registry enrollment.

HISTORY: 2007 Act No. 92, Section 2, eff June 14, 2007.

**SECTION 44‑43‑1430.** Registrant information.

 Donate Life South Carolina shall maintain and update the following information which must be included in the registry on each registrant:

 (1) full name, address, sex, birth date, and race;

 (2) driver's license number or other unique identifying number; and

 (3) other pertinent identifying personal information.

HISTORY: 2007 Act No. 92, Section 2, eff June 14, 2007.

**SECTION 44‑43‑1440.** Contents of procedures for administration of donor registry.

 In developing procedures for the administration of the donor registry, Donate Life South Carolina shall specify:

 (1) a process for updating information in the registry including a method whereby an individual may revoke his or her intent to be an organ and tissue donor;

 (2) a method for making information available to organ procurement organizations seven days a week twenty‑four hours a day;

 (3) limitations on the use of and access to the registry.

HISTORY: 2007 Act No. 92, Section 2, eff June 14, 2007.

**SECTION 44‑43‑1450.** Confidentiality.

 All information contained in the registry is confidential and only may be accessed by procurement organizations that are licensed, accredited, or regulated under federal or state law, and only for the purpose of identifying a potential donor. Identifying information on a registrant or donor may not be disclosed or used for any other purpose without the express written consent of the registrant, donor, or the person who made the anatomical gift.

HISTORY: 2007 Act No. 92, Section 2, eff June 14, 2007.

ARTICLE 15

Nondiscrimination in Access to Anatomical Gift and Organ Transplants

**SECTION 44‑43‑1510.** Legislative findings.

 (A) The General Assembly finds that:

 (1) A mental or physical disability does not diminish a person's right to health care.

 (2) The Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101, prohibits discrimination against persons with disabilities, yet many individuals with disabilities still experience discrimination in accessing critical health care services.

 (3) Nationwide, individuals with mental and physical disabilities have been denied life‑saving organ transplants based on assumptions that their lives are less worthy, that they are incapable of complying with posttransplant medical requirements, or that they lack adequate support systems to ensure compliance with posttransplant medical requirements.

 (4) Although organ transplant centers must consider medical and psychosocial criteria when determining if a patient is suitable to receive an organ transplant, transplant centers that participate in Medicare, Medicaid, and other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs.

 (5) South Carolina residents in need of organ transplants are entitled to assurances that they will not encounter discrimination on the basis of a disability.

 (B) The General Assembly declares that the life of a person with a disability who needs an organ transplant is as worthy and valuable as the life of a person with no disability who needs the same medical service.

HISTORY: 2022 Act No. 163 (H.4597), Section 1, eff May 13, 2022.

**SECTION 44‑43‑1520.** Definitions.

 For purposes of this article:

 (1) "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 or transfusion.

 (2) "Auxiliary aids or services" means an aid or service that is used to provide information to an individual with a cognitive, developmental, intellectual, neurological, or physical disability and is available in a format or manner that allows the individual to better understand the information. An auxiliary aid or service may include:

 (a) qualified interpreters or other effective methods of making aurally delivered materials available to persons with hearing impairments;

 (b) qualified readers, taped texts, texts in accessible electronic format, or other effective methods of making visually delivered materials available to persons with visual impairments;

 (c) supported decision‑making services, including:

 (i) the use of a support individual to communicate information to the individual with a disability, ascertain the wishes of the individual, or assist the individual in making decisions;

 (ii) the disclosure of information to a legal guardian, authorized representative, or another individual designated by the individual with a disability for such purpose, as long as the disclosure is consistent with state and federal law, including the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq., and any regulations promulgated by the United States Department of Health and Human Services to implement the act;

 (iii) if an individual has a court‑appointed guardian or other individual responsible for making medical decisions on behalf of the individual, any measures used to ensure that the individual is included in decisions involving the individual's health care and that medical decisions are in accordance with the individual's own expressed interests;

 (iv) any other aid or service that is used to provide information in a format that is easily understandable and accessible to individuals with cognitive, neurological, developmental, or intellectual disabilities, including assistive communication technology.

 (3) "Covered entity" means:

 (a) any licensed provider of health care services, including licensed health care practitioners, hospitals, nursing facilities, laboratories, intermediate care facilities, psychiatric residential treatment facilities, institutions for individuals with intellectual or developmental disabilities, and prison health centers;

 (b) any entity responsible for matching anatomical gift donors to potential recipients, including an eye bank, organ procurement organization, or tissue bank, as those terms are defined in Section 44‑43‑305.

 (4) "Disability" has the meaning stated in the Americans with Disabilities Act of 1990, as amended.

 (5) "Organ transplant" means the transplantation or transfusion of a part of a human body into the body of another for the purpose of treating or curing a medical condition.

 (6) "Qualified recipient" means an individual who has a disability and meets the essential eligibility requirements for the receipt of an anatomical gift with or without any of the following:

 (a) individuals or entities available to support and assist the individual with an anatomical gift or transplantation;

 (b) auxiliary aids or services;

 (c) reasonable modifications to the policies, practices, or procedures of a covered entity, including modifications to allow for either or both of the following:

 (i) communication with one or more individuals or entities available to support or assist with the recipient's care and medication after surgery or transplantation;

 (ii) consideration of support networks available to the individual, including family, friends, and home‑ and community‑based services, including home‑ and community‑based services funded through Medicaid, Medicare, another health plan in which the individual is enrolled, or any program or source of funding available to the individual, when determining whether the individual is able to comply with posttransplant medical requirements.

HISTORY: 2022 Act No. 163 (H.4597), Section 1, eff May 13, 2022.

**SECTION 44‑43‑1530.** Individuals with disabilities; organ transplant process; requirements and prohibited conduct for covered entities.

 (A) The provisions of this section apply to all stages of the organ transplant process.

 (B) A covered entity must not, solely on the basis of an individual's disability:

 (1) consider the individual ineligible to receive an anatomical gift or organ transplant;

 (2) deny medical services or other services related to organ transplantation, including diagnostic services, evaluation, surgery, counseling, and postoperative treatment and services;

 (3) refuse to refer the individual to a transplant center or other related specialist for the purpose of being evaluated for or receiving an organ transplant;

 (4) refuse to place a qualified recipient on an organ transplant waiting list;

 (5) place a qualified recipient on an organ transplant waiting list at a lower priority position than the position at which the individual would have been placed if the individual did not have a disability; or

 (6) refuse insurance coverage for any procedure associated with being evaluated for or receiving an anatomical gift or organ transplant, including posttransplantation and posttransfusion care.

 (C) Notwithstanding subsection (B), a covered entity may take an individual's disability into account when making treatment or coverage recommendations or decisions, solely to the extent that the disability has been found by a physician or surgeon, following an individualized evaluation of the individual, to be medically significant to the provision of the anatomical gift.

 (D) If an individual has the necessary support system to assist the individual in complying with posttransplant medical requirements, a covered entity may not consider the individual's inability to independently comply with posttransplant medical requirements to be medically significant for the purposes of subsection (C).

 (E) A covered entity must make reasonable modifications to its policies, practices, or procedures to allow individuals with disabilities access to transplantation‑related services, including diagnostic services, surgery, coverage, postoperative treatment, and counseling, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such services.

 (F) A covered entity must take steps necessary to ensure that an individual with a disability is not denied medical services or other services related to organ transplantation, including diagnostic services, surgery, postoperative treatment, or counseling, due to the absence of auxiliary aids or services, unless the covered entity demonstrates that taking the steps would fundamentally alter the nature of the medical services or other services related to organ transplantation or would result in an undue burden for the covered entity.

 (G) Nothing in this section may be deemed to require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant.

 (H) A covered entity must otherwise comply with the requirements of Titles II and III of the Americans with Disabilities Act of 1990, as amended.

HISTORY: 2022 Act No. 163 (H.4597), Section 1, eff May 13, 2022.

**SECTION 44‑43‑1540.** Remedies for violations of this article.

 (A) Whenever it appears that a covered entity has violated or is violating any of the provisions of this article, the affected individual may commence a civil action for injunctive and other equitable relief against the covered entity for purposes of enforcing compliance with this article. The action may be brought in the circuit court for the county where the affected individual resides or resided or was denied the organ transplant or referral.

 (B) In an action brought under this article, the court shall give priority on its docket and expedited review, and may grant injunctive or other equitable relief, including:

 (1) requiring auxiliary aids or services to be made available for a qualified recipient;

 (2) requiring the modification of a policy, practice, or procedure of a covered entity; or

 (3) requiring facilities be made readily accessible to and usable by a qualified recipient.

 (C) Nothing in this article is intended to limit or replace available remedies under the Americans with Disabilities Act of 1990 or any other applicable law.

 (D) This article does not create a right to compensatory or punitive damages against a covered entity.

HISTORY: 2022 Act No. 163 (H.4597), Section 1, eff May 13, 2022.