~~Indicates Matter Stricken~~

Indicates New Matter

INTRODUCED

March 31, 2009

**S. 407**

Introduced by Senators Hayes, Cleary and Campsen

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Read the first time March 31, 2009.

**A** **BILL**

TO AMEND ARTICLE 1, CHAPTER 43, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DONATION OF HUMAN BODIES, PARTS OF THE HUMAN BODY AND HUMAN TISSUE, SO AS TO CONFORM CROSS REFERENCES TO THE REVISED UNIFORM ANATOMICAL GIFT ACT, TO DELETE THE PROVISION STATING THAT A DONOR DESIGNATION ON A DRIVER’S LICENSE DOES NOT CONSTITUTE A GIFT UNDER THE UNIFORM ANATOMICAL GIFT ACT; TO AMEND ARTICLE 5, CHAPTER 43, TITLE 44, RELATING TO THE UNIFORM ANATOMICAL GIFT ACT, SO AS TO CHANGE THE ACT NAME TO THE REVISED UNIFORM ANATOMICAL GIFT ACT, AND, AMONG OTHER THINGS, TO REVISE DEFINITIONS, DONOR ELIGIBILITY, DONATION AMENDMENT AND REVOCATION PROCEDURES, THE PRIORITY ORDER TO GIVE CONSENT, SUBSTITUTE DONOR PROCEDURES, DONEE QUALIFICATIONS, AND ALTERNATIVE DONEE PROCEDURES; TO ESTABLISH PROCEDURES FOR REFUSAL TO MAKE AN ANATOMICAL GIFT; TO REQUIRE CERTAIN LAW ENFORCEMENT, HOSPITAL PERSONNEL, AND ORGAN PROCUREMENT ORGANIZATIONS TO MAKE REASONABLE SEARCHES FOR DONOR INFORMATION AND DONOR REFUSAL INFORMATION; TO PROVIDE THAT A PHYSICIAN WHO ATTENDED A PERSON AT DEATH OR WHO DETERMINES THE TIME OF DEATH MAY NOT PARTICIPATE IN REMOVAL OR TRANSPLANTATION PROCEDURES; TO ESTABLISH CRIMINAL PENALTIES FOR SELLING OR PURCHASING ORGANS AND FOR OBTAINING FINANCIAL GAIN BY FALSIFYING OR DEFACING A DONATION DOCUMENT; TO ESTABLISH CRITERIA FOR THE VALIDITY OF AN ORGAN DONATION; TO ESTABLISH PROCEDURES TO RESOLVE ISSUES WHEN CERTAIN CONFLICTS EXIST BETWEEN A DECLARATION OF A ORGAN DONATION AND THE MEDICAL SUITABILITY OF THE ORGAN DONATION; TO REQUIRE CORONERS TO COOPERATE WITH PROCUREMENT ORGANIZATIONS TO MAXIMIZE THE OPPORTUNITY TO RECOVER ANATOMICAL GIFTS; AND TO AMEND ARTICLE 11, CHAPTER 43, TITLE 44, RELATING TO HOSPITAL POLICY AND PROTOCOL FOR ORGAN AND TISSUE DONATION, SO AS TO REVISE DEFINITIONS AND PROCEDURES FOR CONTACTING PERSONS AUTHORIZED TO CONSENT TO ORGAN DONATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 43, Title 44 of the 1976 Code is amended to read:

“Article 1

General Provisions

Section 44‑43‑10. 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 tissues, 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.

Section 44‑43‑20. (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.

Section 44‑43‑30. 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 the Revised Uniform Anatomical Gift Act, Article 5, 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.

Section 44‑43‑40. 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 notation does not constitute execution of a gift under the Uniform Anatomical Gift Act.~~ The department is not the registry of anatomical gifts.

Section 44‑43‑50. 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.”

SECTION 2. Article 5, Chapter 43, Title 44 of the 1976 Code is amended to read:

“Article 5

Revised Uniform Anatomical Gift Act

~~Section 44‑43‑310.~~ ~~This article may be cited as the Uniform Anatomical Gift Act.~~

~~Section 44‑43‑320.~~ ~~As used in this article:~~

~~(1) “Bank or storage facility” means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts of human bodies.~~

~~(2) “Decedent” means a deceased individual and includes a stillborn infant or fetus.~~

~~(3) “Donor” means an individual who makes a gift of all or part of his body.~~

~~(4) “Hospital” means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States Government, a state, or a subdivision of the United States Government or state, although not required to be licensed under state laws.~~

~~(5) “Part” includes organs, tissues, eyes, bones, arteries, blood, other fluids, and other portions of a human body, and “part” includes “parts”.~~

~~(6) “Person” means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.~~

~~(7) “Physician” or “surgeon” means a physician or surgeon licensed or authorized to practice under the laws of any state.~~

~~(8) “State” includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.~~

~~(9) “Organ procurement organization” means the agency or organization designated by the United States Department of Health and Human Services as the organ procurement agency for the State.~~

~~Section 44‑43‑330.~~ ~~(A) An individual of sound mind and eighteen years of age or more may give all or any part of his body for any purposes specified in Section 44‑43‑340, the gift to take effect upon death.~~

~~(B) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent’s body for any purposes specified in Section 44‑43‑340:~~

~~(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) a parent or adult child of the decedent;~~

~~(4) an adult sibling, grandparent, or adult grandchild of the decedent;~~

~~(5) a guardian of the person of the decedent at the time of his death;~~

~~(6) any other person authorized or under obligation to dispose of the body.~~

~~(C) If the donee has actual notice of contrary indications by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee must not accept the gift. The persons authorized by this section may make the gift after death or immediately before death.~~

~~(D) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.~~

~~(E) The rights of the donee created by the gift are paramount to the rights of others except as provided by Section 44‑43‑380(D).~~

~~Section 44‑43‑340.~~ ~~The following persons may become donees of gifts of bodies or parts of bodies for the purposes stated:~~

~~(1)~~ ~~a hospital, surgeon, or physician for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;~~

~~(2)~~ ~~an accredited medical or dental school or college or university for education, research, advancement of medical or dental science, or therapy;~~

~~(3)~~ ~~a bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;~~

~~(4)~~ ~~a specified individual for therapy or transplantation needed by that individual.~~

~~Section 44‑43‑350.~~ ~~(A) A gift of all or part of the body under Section 44‑43‑330(A) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.~~

~~(B)~~ ~~A gift of all or part of the body under Section 44‑43‑330(A) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of two witnesses who must sign the document in the donor’s presence. If the donor cannot sign, the document may be signed for the donor at his direction and in the donor’s presence, and in the presence of two witnesses who must sign the document in the donor’s presence. Delivery of the document of gift during the donor’s lifetime is not necessary to make the gift valid.~~

~~(C)~~ ~~The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection must not participate in the procedures for removing or transplanting a part.~~

~~(D)~~ ~~Notwithstanding Section 44‑43‑380(B), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.~~

~~(E)~~ ~~A gift by a person designated in Section 44‑43‑330(B) must be made by:~~

~~(1)~~ ~~a document signed by that person or an oral designation witnessed by at least two people; or~~

~~(2)~~ ~~that person’s telephonic or recorded message.~~

~~(F)~~ ~~If an organ and tissue donor card, donor driver’s license, living will, durable power of attorney, or other document of gift evidencing a gift of organs or tissue, or any combination of these, has been executed, the consent required pursuant to Section 44‑43‑330 is not required to render the gift valid and effective.~~

~~(G)~~ ~~A gift of all or part of the body, regardless of the document making such gift or donation, that is not revoked by the donor before death, is irrevocable and does not require the consent or concurrence of any person after the donor’s death to render the gift of the donor valid and effective.~~

~~(H)~~ ~~Coroners, law enforcement officers, and emergency personnel responding to the scene of an accident or trauma shall take reasonable steps to ensure that the driver’s license, organ and tissue donor card, or other evidence that the individual is an organ or tissue donor and a medical alert bracelet, if any, of the individuals involved in the accident or trauma, accompany the individuals to the hospital or other health care facility.~~

~~Section 44‑43‑360.~~ ~~If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy of one of these, may be delivered to the donee to expedite the appropriate procedures immediately after death; however, delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy of one of these may be deposited in any hospital, bank, or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of an interested party upon or after the donor’s death, the person in possession shall produce the document for examination.~~

~~Section 44‑43‑370.~~ ~~(A)~~ ~~If a will, card, or other document, or executed copy of one of these, has been delivered to a specified donee, the donor may amend or revoke the gift by:~~

~~(1)~~ ~~the execution and delivery to the donee of a signed statement;~~

~~(2)~~ ~~an oral statement made in the presence of two persons and communicated to the donee;~~

~~(3)~~ ~~a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee;~~

~~(4)~~ ~~a signed card or document found on his person or in his effects.~~

~~(B)~~ ~~A document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (A) or by destruction, cancellation, or mutilation of the document and all executed copies of the document.~~

~~(C)~~ ~~A gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (A).~~

~~Section 44‑43‑380.~~ ~~(A)~~ ~~The donee may accept or reject the gift. If the donee accepts a gift of the entire body, the donee may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.~~

~~(B)~~ ~~The time of death must be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. This physician must not participate in the procedures for removing or transplanting a part.~~

~~(C)~~ ~~A person who 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 other medical attendant.~~

~~Section 44‑43‑400.~~ ~~This article must be liberally construed to effectuate the wishes of the donor.~~

~~Section 44‑43‑410.~~ ~~If an anatomical gift is made in this State of an organ for transplantation purposes for which the donor does not name a specific donee and if the organ is deemed suitable for transplantation to an individual, the organ must be donated to the organ procurement organization designated by the United States Department of Health and Human Services as the organ procurement agency for the State. The organ procurement organization shall use its best efforts to determine if there is a suitable recipient in this State.~~

~~Section 44‑43‑420.~~ ~~(A)~~ ~~The organ procurement organization may enter into reciprocal agreements for the sharing of organs with qualified organ procurement organizations in other states that the organ procurement organization considers advisable, necessary, or expedient. However, before the organ procurement organization enters into a reciprocal agreement, the proposed agreement must be approved by the Organ Procurement and Transplantation Network under contract to the United States Department of Health and Human Services.~~

~~(B)~~ ~~Except as may otherwise be provided for by an agreement entered into pursuant to subsection (A), the organ procurement organization may only transfer an organ to an out‑of‑state organ procurement organization or suitable out‑of‑state recipient for transplantation only if a suitable recipient in this State cannot be found in a reasonable amount of time.~~

Section 44‑43‑300. This article may be cited as the ‘Revised Uniform Anatomical Gift Act’.

Section 44‑43‑305. 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.

Section 44‑43‑310. This article applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Section 44‑43‑315. 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.

Section 44‑43‑320. (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.

Section 44‑43‑325. (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).

Section 44‑43‑330. (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.

Section 44‑43‑335. (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.

Section 44‑43‑340. (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.

Section 44‑43‑345. (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.

Section 44‑43‑350. (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.

Section 44‑43‑355. (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.

Section 44‑43‑360. (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.

Section 44‑43‑365. (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.

Section 44‑43‑370. Each hospital in this State shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Section 44‑43‑375. (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.

Section 44‑43‑380. 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.

Section 44‑43‑385. (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.

Section 44‑43‑390. (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.

Section 44‑43‑395. (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.

Section 44‑43‑400. (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.

Section 44‑43‑405. (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), (E), or (F), 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.

Section 44‑43‑410. 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.

Section 44‑43‑415. 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).”

SECTION 3. Article 11, Chapter 43, Title 44 of the 1976 Code is amended to read:

“Article 11

Hospital Policy and Protocol for Organ and Tissue Donation

Section 44‑43‑910. As used in this article:

(1) ~~‘Brain death’ means irreversible cessation of all functions of the brain, including the brain stem, as determined in accordance with accepted medical standards.~~

~~(2)~~ ‘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.

~~(3)~~(2) ‘Potential organ or tissue donor’ means a person who has died or is dying ~~in circumstances that give rise to a reasonable medical belief that the person will meet the medical criteria for donation of at least one organ including, but not limited to, the heart, lung, liver, pancreas, and kidneys or any tissue including, but not limited to, heart valves, eyes, bone, cartilage, skin, ligaments, tendons, and fascia~~.

~~(4)~~(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 tissues.

Section 44‑43‑920. 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.

Section 44‑43‑930. 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.

Section 44‑43‑940. 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.

Section 44‑43‑945. (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 ~~or within two hours of a patient’s death~~ 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, ~~or both,~~ a representative of the organ and tissue procurement organization ~~or a person designated by the organ and tissue procurement organization~~ shall contact the appropriate person authorized to consent to the donation pursuant to Section ~~44‑43‑330 to ascertain if the deceased is an organ or tissue donor, or both, and if not, to inform the person about and the procedures for organ and tissue donation~~ 44‑43‑340.

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

Section 44‑43‑950. As provided in Section ~~44‑43‑330~~ 44‑43‑340, persons in the stated order of priority may give consent for organ or tissue donation.

Section 44‑43‑960. 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 ~~shall~~ 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.

Section 44‑43‑970. (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.

Section 44‑43‑985. 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.

Section 44‑43‑1000. 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.

Section 44‑43‑1010. All hospital and physician charges following declaration of ~~brain~~ 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.

Section 44‑43‑1015. Each hospital shall work collaboratively with the organ and tissue procurement organization in conducting periodic death record reviews.”

SECTION 4. This act takes effect upon approval by the Governor.

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