

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 1372
Committee Substitute Favorable 5/2/07
Senate Health Care Committee Substitute Adopted 6/20/07
Senate Judiciary II (Criminal) Committee Substitute Adopted 7/23/07

Short Title: Organ & Tissue Donation/The Heart Prevails. (Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE REVISED UNIFORM ANATOMICAL GIFT ACT; TO PROVIDE THAT THE DECISION TO HAVE THE HEART SYMBOL ON ONE'S DRIVERS LICENSE IS LEGALLY SUFFICIENT CONSENT TO ORGAN DONATION UNLESS REVOKED BY THE DONOR; TO IMPROVE DONOR OR PROSPECTIVE DONOR ONLINE ACCESS TO INDICATE OR REVOKE ORGAN AND TISSUE DONATION; AND TO MAKE CONFORMING CHANGES TO OTHER AFFECTED GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 130A of the General Statutes is amended by adding the following new Part to read:

"Part 3A. Revised Uniform Anatomical Gift Act.

"§ 130A-412.3. Short title.

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

"§ 130A-412.4. Definitions.

The following definitions apply in this Part:

- (1) "Adult" means an individual who is at least 18 years of age.
- (2) "Agent" means an individual:
 - a. Authorized to make an anatomical gift on the principal's behalf under 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) "Body part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

- 1 (5) "Decedent" means a deceased individual whose body or body part is or
2 may be the source of an anatomical gift. The term includes a stillborn
3 infant and, subject to restrictions imposed by law other than this
4 Article, a fetus.
- 5 (6) "Disinterested witness" means any individual except for the following:
6 a. The donor's: spouse, child, parent, sibling, grandchild,
7 grandparent, or guardian.
8 b. An adult who exhibited special care and concern for the donor.
9 c. A person to whom an anatomical gift could pass under
10 G.S. 130A-412.13.
- 11 (7) "Document of gift" means a donor card or other record used to make
12 an anatomical gift. The term includes a statement or symbol on a
13 drivers license, identification card, or donor registry.
- 14 (8) "Donor" means an individual whose body or body part is the subject of
15 an anatomical gift.
- 16 (9) "Donor registry" means a database that contains records of anatomical
17 gifts and amendments to or revocations of anatomical gifts.
- 18 (10) "Drivers license" means a license or permit issued by the North
19 Carolina Department of Transportation, Division of Motor Vehicles, to
20 operate a vehicle, whether or not conditions are attached to the license
21 or permit.
- 22 (11) "Eye bank" means an entity that is licensed, accredited, or regulated
23 under federal or state law to engage in the recovery, screening, testing,
24 processing, storage, or distribution of human eyes or portions of
25 human eyes.
- 26 (12) "Guardian" means a person appointed by a court to make decisions
27 regarding the support, care, education, health, or welfare of an
28 individual. The term does not include a guardian ad litem.
- 29 (12a) "Health care decision" means any decision made regarding the health
30 care of the prospective donor.
- 31 (13) "Hospital" means a facility licensed as a hospital under the law of any
32 state or a facility operated as a hospital by the United States, a state, or
33 a subdivision of a state.
- 34 (14) "Identification card" means an identification card issued by the North
35 Carolina Department of Transportation, Division of Motor Vehicles.
- 36 (15) "Know" means to have actual knowledge.
- 37 (16) "Minor" means an individual who is under 18 years of age.
- 38 (17) "Organ procurement organization" means a person designated by the
39 Secretary of the United States Department of Health and Human
40 Services as an organ procurement organization.
- 41 (18) "Parent" means a parent whose parental rights have not been
42 terminated.
- 43 (19) "Person" means an individual, corporation, business trust, estate, trust,
44 partnership, limited liability company, association, joint venture,

- 1 public corporation, government or governmental subdivision, agency,
2 or instrumentality, or any other legal or commercial entity.
- 3 (20) "Physician" means an individual authorized to practice medicine or
4 osteopathy under the law of any state.
- 5 (21) "Procurement organization" means an eye bank, organ procurement
6 organization, or tissue bank.
- 7 (22) "Prospective donor" means an individual who is dead or near death
8 and has been determined by a procurement organization to have a body
9 part that could be medically suitable for transplantation, therapy,
10 research, or education. The term does not include an individual who
11 has made a refusal.
- 12 (23) "Reasonably available" means able to be contacted by a procurement
13 organization without undue effort and willing and able to act in a
14 timely manner consistent with existing medical criteria necessary for
15 the making of an anatomical gift.
- 16 (24) "Recipient" means an individual into whose body a decedent's body
17 part has been or is intended to be transplanted.
- 18 (25) "Record" means information that is inscribed on a tangible medium or
19 that is stored in an electronic or other medium and is retrievable in
20 perceivable form.
- 21 (26) "Refusal" means a record created under G.S. 130A-412.9 that
22 expressly states an intent to bar other persons from making an
23 anatomical gift of an individual's body or body part.
- 24 (27) "Sign" means, with the present intent to authenticate or adopt a record:
25 a. To execute or adopt a tangible symbol; or
26 b. To attach to or logically associate with the record an electronic
27 symbol, sound, or process.
- 28 (28) "State" means a state of the United States, the District of Columbia,
29 Puerto Rico, the United States Virgin Islands, or any territory or
30 insular possession subject to the jurisdiction of the United States.
- 31 (29) "Technician" means an individual determined to be qualified to
32 remove or process body parts by an appropriate organization that is
33 licensed, accredited, or regulated under federal or state law. The term
34 includes an enucleator.
- 35 (30) "Tissue" means a portion of the human body other than an organ or an
36 eye. The term does not include blood unless the blood is donated for
37 the purpose of research or education.
- 38 (31) "Tissue bank" means a person that is licensed, accredited, or regulated
39 under federal or state law to engage in the recovery, screening, testing,
40 processing, storage, or distribution of tissue.
- 41 (32) "Transplant hospital" means a hospital that furnishes organ transplants
42 and other medical and surgical specialty services required for the care
43 of transplant patients.

44 **"§ 130A-412.5. Applicability.**

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

3 **"§ 130A-412.6. Who may make an anatomical gift before donor's death.**

4 Subject to G.S. 130A-412.10, an anatomical gift of a donor's body or body part may
5 be made during the life of the donor for the purpose of transplantation, therapy,
6 research, or education in the manner provided in G.S. 130A-412.7 by:

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

8 a. Emancipated; or

9 b. Authorized under State law to apply for a drivers license
10 because the donor is at least 16 years of age;

11 (2) An agent of the donor to the extent authorized under a power of
12 attorney for health care or other record;

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

14 (4) The donor's guardian.

15 **"§ 130A-412.7. Manner of making anatomical gift before donor's death.**

16 (a) A donor may make an anatomical gift by any of the following methods:

17 (1) By authorizing that a statement or symbol be imprinted on the donor's
18 drivers license or identification card indicating that the donor has made
19 an anatomical gift. Anatomical gifts made by this method shall not
20 include a donation of tissue or the donor's body.

21 (2) In a will.

22 (3) During a terminal illness or injury of the donor, by any form of
23 communication addressed to at least two adults, at least one of whom
24 is a disinterested witness.

25 (4) As provided in subsection (b) of this section.

26 (b) A donor or other person authorized to make an anatomical gift under
27 G.S. 130A-412.6 may make a gift by a signed donor card or other record signed by the
28 donor or other person making the gift or by authorizing that a statement or symbol
29 indicating that the donor has made an anatomical gift be included on a donor registry. If
30 the donor or other person is physically unable to sign a record, the record may be signed
31 by another individual at the direction of the donor or other person and must:

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

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

37 (c) Revocation, suspension, expiration, or cancellation of a drivers license or
38 identification card upon which an anatomical gift is indicated does not invalidate the
39 gift.

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

43 **"§ 130A-412.8. Amending or revoking anatomical gift before donor's death.**

1 (a) Subject to G.S. 130A-412.10, a donor or other person authorized to make an
2 anatomical gift under G.S. 130A-412.6 may amend or revoke an anatomical gift by:

3 (1) A record signed by:

4 a. The donor;

5 b. The other person; or

6 c. Subject to subsection (b) of this section, another individual
7 acting at the direction of the donor or the other person if the
8 donor or other person is physically unable to sign; or

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

12 (b) A record signed pursuant to sub-subdivision c. of subdivision (1) of
13 subsection (a) of this section must:

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

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

19 (c) Subject to G.S. 130A-412.10, a donor or other person authorized to make an
20 anatomical gift under G.S. 130A-412.6 may revoke an anatomical gift by the
21 destruction or cancellation of the document of gift, or the portion of the document of
22 gift used to make the gift, with the intent to revoke the gift.

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

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

29 **"§ 130A-412.9. Refusal to make anatomical gift; effect of refusal.**

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

32 (1) A record signed by:

33 a. The individual; or

34 b. Subject to subsection (b) of this section, another individual
35 acting at the direction of the individual if the individual is
36 physically unable to sign;

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

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

42 (b) A record signed pursuant to sub-subdivision b. of subdivision (1) of
43 subsection (a) of this section must:

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

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

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

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

9 (2) By subsequently making an anatomical gift pursuant to
10 G.S. 130A-412.7 that is inconsistent with the refusal; or

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

14 (d) Except as otherwise provided in G.S. 130A-412.10(h), in the absence of an
15 express, contrary indication by the individual set forth in the refusal, an individual's
16 unrevoked refusal to make an anatomical gift of the individual's body or body part bars
17 all other persons from making an anatomical gift of the individual's body or body part.

18 **"§ 130A-412.10. Preclusive effect of an anatomical gift, amendment, or revocation.**

19 (a) Except as otherwise provided in subsection (g) of this section and subject to
20 subsection (f) of this section, in the absence of an express, contrary indication by the
21 donor, a person other than the donor is barred from making, amending, or revoking an
22 anatomical gift of a donor's body or body part if either of the following apply:

23 (1) The donor made an anatomical gift of the donor's body or body part
24 under G.S. 130A-412.7.

25 (2) The donor made an amendment to an anatomical gift of the donor's
26 body or body part under G.S. 130A-412.8.

27 (b) A donor's revocation of an anatomical gift of the donor's body or body part
28 under G.S. 130A-412.8 is not a refusal and does not bar another person specified in
29 G.S. 130A-412.6 or G.S. 130A-412.11 from making an anatomical gift of the donor's
30 body or body part under G.S. 130A-412.7 or G.S. 130A-412.12.

31 (c) If a person other than the donor makes an unrevoked anatomical gift of the
32 donor's body or body part under G.S. 130A-412.7 or an amendment to an anatomical
33 gift of the donor's body or body part under G.S. 130A-412.8, another person may not
34 make, amend, or revoke the gift of the donor's body or body part under
35 G.S. 130A-412.12.

36 (d) A revocation of an anatomical gift of a donor's body or body part under
37 G.S. 130A-412.8 by a person other than the donor does not bar another person from
38 making an anatomical gift of the body or body part under G.S. 130A-412.7 or
39 G.S. 130A-412.12.

40 (e) In the absence of an express, contrary indication by the donor or other person
41 authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a
42 body part is neither a refusal to give another body part nor a limitation on the making of
43 an anatomical gift of another body part at a later time by the donor or another person.

1 (f) In the absence of an express, contrary indication by the donor or other person
2 authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a
3 body part for one or more of the purposes set forth in G.S. 130A-412.6 is not a
4 limitation on the making of an anatomical gift of the body part for any of the other
5 purposes by the donor or any other person under G.S. 130A-412.7 or G.S. 130A-412.12.

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

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

11 **"§ 130A-412.11. Who may make an anatomical gift of decedent's body or body**
12 **part.**

13 (a) Subject to subsections (b) and (c) of this section, and unless barred by
14 G.S. 130A-412.9 or G.S. 130A-412.10, an anatomical gift of a decedent's body or body
15 part for purpose of transplantation, therapy, research, or education may be made by any
16 member of the following classes of persons who is reasonably available, in the order of
17 priority listed:

18 (1) An agent of the decedent at the time of death who could have made an
19 anatomical gift under G.S. 130A-412.6(2) immediately before the
20 decedent's death;

21 (2) The spouse of the decedent;

22 (3) Adult children of the decedent;

23 (4) Parents of the decedent;

24 (5) Adult siblings of the decedent;

25 (6) Adult grandchildren of the decedent;

26 (7) Grandparents of the decedent;

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

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

30 (10) Any other person having the authority to dispose of the decedent's
31 body.

32 (b) If there is more than one member of a class listed in subdivision (a)(1), (3),
33 (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an anatomical
34 gift may be made by a member of the class unless that member or a person to which the
35 gift may pass under G.S. 130A-412.13 knows of an objection by another member of the
36 class. If an objection is known, the gift may be made only by a majority of the members
37 of the class who are reasonably available.

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

41 **"§ 130A-412.12. Manner of making, amending, or revoking anatomical gift of**
42 **decedent's body or body part.**

43 (a) A person authorized to make an anatomical gift under G.S. 130A-412.11 may
44 make an anatomical gift by a document of gift signed by the person making the gift or

1 by that person's oral communication that is electronically recorded or is
2 contemporaneously reduced to a record and signed by the individual receiving the oral
3 communication.

4 (b) Subject to subsection (c) of this section, an anatomical gift by a person
5 authorized under G.S. 130A-412.11 may be amended or revoked orally or in a record by
6 any member of a prior class who is reasonably available. If more than one member of
7 the prior class is reasonably available, the gift made by a person authorized under
8 G.S. 130A-412.11 may be:

9 (1) Amended only if a majority of the reasonably available members
10 agrees to the amending of the gift; or

11 (2) Revoked only if a majority of the reasonably available members agrees
12 to the revoking of the gift or if they are equally divided as to whether
13 to revoke the gift.

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

18 **§ 130A-412.13. Persons that may receive anatomical gift; purpose of anatomical**
19 **gift.**

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

22 (1) A hospital; accredited medical school, dental school, college, or
23 university; organ procurement organization; or other appropriate
24 person, including the Commission on Anatomy, for research or
25 education;

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

29 (3) An eye bank or tissue bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (j) A person may not accept an anatomical gift if the person knows that the gift
35 was not effectively made under G.S. 130A-412.7 or G.S. 130A-412.12 or if the person
36 knows that the decedent made a refusal under G.S. 130A-412.9 that was not revoked.
37 For purposes of this subsection, if a person knows that an anatomical gift was made on a
38 document of gift, the person is deemed to know of any amendment or revocation of the
39 gift or any refusal to make an anatomical gift on the same document of gift.

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

42 **§ 130A-412.14. Search and notification.**

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

1 information identifying the individual as a donor or as an individual who made a
2 refusal:

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

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

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

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

14 **"§ 130A-412.15. Delivery of document of gift not required; right to examine.**

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

17 (b) Upon or after an individual's death, a person in possession of a document of
18 gift or a refusal to make an anatomical gift with respect to the individual shall allow
19 examination and copying of the document of gift or refusal by a person authorized to
20 make or object to the making of an anatomical gift with respect to the individual or by a
21 person to which the gift could pass under G.S. 130A-412.13.

22 **"§ 130A-412.16. Rights and duties of procurement organization and others.**

23 (a) When a hospital refers an individual at or near death to a procurement
24 organization, the organization shall make a reasonable search of the records of the North
25 Carolina Department of Transportation, Division of Motor Vehicles, and any donor
26 registry that it knows exists for the geographical area in which the individual resides to
27 ascertain whether the individual has made an anatomical gift.

28 (b) A procurement organization must be allowed reasonable access to
29 information in the records of the North Carolina Department of Transportation, Division
30 of Motor Vehicles, to ascertain whether an individual at or near death is a donor.

31 (c) When a hospital refers an individual at or near death to a procurement
32 organization, the organization may conduct any reasonable examination necessary to
33 ensure the medical suitability of a body part that is or could be the subject of an
34 anatomical gift for transplantation, therapy, research, or education from a donor or a
35 prospective donor. During the examination period, measures necessary to ensure the
36 medical suitability of the body part may not be withdrawn unless the hospital or
37 procurement organization knows that the individual expressed a contrary intent.

38 (d) Unless prohibited by law other than this Part, at any time after a donor's
39 death, the person to which a body part passes under G.S. 130A-412.13 may conduct any
40 reasonable examination necessary to ensure the medical suitability of the body or body
41 part for its intended purpose.

42 (e) Unless otherwise prohibited by law, an examination under subsection (c) or
43 (d) of this section may include an examination of all medical and dental records of the
44 donor or prospective donor.

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

6 (g) Upon referral by a hospital under subsection (a) of this section, a procurement
7 organization shall make a reasonable search for any person listed in G.S. 130A-412.11
8 having priority to make an anatomical gift on behalf of a prospective donor. If a
9 procurement organization receives information that an anatomical gift to any other
10 person was made, amended, or revoked, it shall promptly advise the other person of all
11 relevant information.

12 (h) Subject to G.S. 130A-412.13(i) and G.S. 130A-412.25, the rights of the
13 person to which a body part passes under G.S. 130A-412.13 are superior to the rights of
14 all others with respect to the body part. The person may accept or reject an anatomical
15 gift in whole or in part. Subject to the terms of the document of gift and this Part, a
16 person that accepts an anatomical gift of an entire body may allow embalming, burial,
17 or cremation, and use of remains in a funeral service. If the gift is of a body part, the
18 person to which the body part passes under G.S. 130A-412.13, upon the death of the
19 donor and before embalming, burial, or cremation, shall cause the body part to be
20 removed without unnecessary mutilation.

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

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

26 **"§ 130A-412.17. Coordination of procurement and use.**

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

29 **"§ 130A-412.18. Sale or purchase of body parts prohibited.**

30 (a) Except as otherwise provided in subsection (b) of this section, a person, that
31 for valuable consideration, knowingly purchases or sells a body part for transplantation
32 or therapy if removal of a body part from an individual is intended to occur after the
33 individual's death commits a Class H felony and upon conviction may be fined up to
34 fifty thousand dollars (\$50,000) for each offense.

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

38 **"§ 130A-412.19. Other prohibited acts.**

39 A person that, in order to obtain a financial gain, intentionally falsifies, forges,
40 conceals, defaces, or obliterates a document of gift, an amendment or revocation of a
41 document of gift, or a refusal commits a Class H felony and upon conviction may be
42 fined up to fifty thousand dollars (\$50,000) for each offense.

43 **"§ 130A-412.20. Immunity.**

1 (a) A person that acts with due care in accordance with this Part or with the
2 applicable anatomical gift law of another state, or attempts in good faith to do so, is not
3 liable for the act in a civil action, criminal prosecution, or administrative proceeding.

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

6 (c) In determining whether an anatomical gift has been made, amended, or
7 revoked under this Part, a person may rely upon representations of an individual listed
8 in subdivisions (2) through (8) of G.S. 130A-412.11(a) relating to the individual's
9 relationship to the donor or prospective donor unless the person knows that the
10 representation is untrue.

11 **"§ 130A-412.21. Law governing validity; choice of law as to execution of document**
12 **of gift; presumption of validity.**

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

14 (1) This Part;

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

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

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

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

24 **"§ 130A-412.22. Donor registry.**

25 The online Organ Donor Registry Internet site established pursuant to G.S. 20-43.2
26 shall be the State donor registry for anatomical gifts made pursuant to this Part.
27 Requirements for maintenance and use of the State donor registry shall be as provided
28 under G.S. 20-43.2.

29 **"§ 130A-412.23. Cooperation between a medical examiner and the procurement**
30 **organization.**

31 (a) The medical examiner shall cooperate with procurement organizations to
32 maximize the opportunity to recover anatomical gifts for the purpose of transplantation,
33 therapy, research, or education.

34 (b) If a medical examiner receives notice from a procurement organization that
35 an anatomical gift might be available or was made with respect to a decedent whose
36 body is under the jurisdiction of the medical examiner and a postmortem examination is
37 going to be performed, unless the medical examiner denies recovery in accordance with
38 G.S. 130A-412.24, the medical examiner or designee shall conduct a postmortem
39 examination of the body or the body part in a manner and within a period compatible
40 with its preservation for the purposes of the gift.

41 (c) A body part may not be removed from the body of a decedent under the
42 jurisdiction of a medical examiner for transplantation, therapy, research, or education
43 unless the body part is the subject of an anatomical gift. The body of a decedent under
44 the jurisdiction of the medical examiner may not be delivered to a person for research or

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

4 (d) As used in this section and G.S. 130A-412.24, "medical examiner" includes
5 the Chief Medical Examiner, a county medical examiner, or a designee of either.

6 **"§ 130A-412.24. Facilitation of anatomical gift from decedent whose body is under**
7 **the jurisdiction of a medical examiner.**

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

17 (b) The medical examiner may conduct a medicolegal examination, including
18 physical examination of a donor or prospective donor and review of all medical records,
19 laboratory test results, X-rays, other diagnostic results, and other information that any
20 person possesses about a donor or prospective donor whose body is under the
21 jurisdiction of the medical examiner or whose body would be under the medical
22 examiner's jurisdiction upon death and that the medical examiner determines may be
23 relevant to the investigation.

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

29 (d) If an anatomical gift has been or might be made of a body part of a decedent
30 whose body is under the jurisdiction of the medical examiner and a postmortem
31 examination is not required, or the medical examiner determines that a postmortem
32 examination is required but that the recovery of the body part that is the subject of an
33 anatomical gift will not interfere with the examination, the medical examiner and
34 procurement organization shall cooperate in the timely removal of the body part from
35 the decedent for the purpose of transplantation, therapy, research, or education.

36 (e) If an anatomical gift of a body part from the decedent under the jurisdiction
37 of the medical examiner has been or might be made, but the medical examiner initially
38 believes that the recovery of the body part could interfere with the postmortem
39 investigation into the decedent's cause or manner of death, the collection of evidence, or
40 the description, documentation, or interpretation of injuries on the body, the medical
41 examiner shall consult with the procurement organization or physician or technician
42 designated by the procurement organization about the proposed recovery. After
43 consultation, the medical examiner may deny or allow the recovery.

1 (f) If the medical examiner or designee allows recovery of a body part under
2 subsection (d) or (e) of this section, the procurement organization shall provide the
3 medical examiner or designee with a record describing the condition of the body part
4 signed by the physician or technician who removes the body part and any other
5 information and observations that would assist in the postmortem examination."

6 "§§ 130A-412.25 through 130A-412.29: Reserved for future codification purposes."

7 SECTION 2. G.S. 20-43.2 reads as rewritten:

8 "§ 20-43.2. **Internet access to organ donation records by organ procurement**
9 **organizations.**

10 (a) The Department of Transportation, Division of Motor Vehicles, shall
11 establish and maintain a statewide, online Organ Donor Registry Internet site~~site~~
12 (hereafter "Donor Registry"). The purpose of the ~~Organ Donor Internet site~~ Donor
13 Registry is to enable federally designated organ procurement organizations and eye
14 banks to have ~~timely access to~~ access 24 hours per day, seven days per week to obtain
15 relevant information on the Donor Registry to determine, at or near death of the donor
16 or a prospective donor, whether the donor or prospective donor has made, amended, or
17 revoked an anatomical gift through a symbol on the donor's or prospective donor's
18 drivers license, special identification card, or other manner. ~~the names of individuals~~
19 ~~who have stated to the Division the individual's intent to be an organ donor and have an~~
20 ~~organ donation symbol on the individual's drivers license or special identification card.~~
21 The data available on the ~~Organ Donor Internet site~~ Donor Registry shall be limited to
22 the individual's first, middle, and last name, date of birth, address, sex, county of
23 residence, and drivers license number. The Division of Motor Vehicles shall ensure that
24 only federally designated organ procurement organizations and eye banks operating in
25 this State have access to the ~~Organ Donor Internet site~~ Donor Registry in read-only
26 format. The Division of Motor Vehicles shall enable federally designated organ
27 procurement organizations and eye banks operating in this State to have online access in
28 read-only format to the ~~Organ Donor Internet site~~ Donor Registry through a unique
29 identifier and password issued to the organ procurement organization or eye bank by the
30 Division of Motor Vehicles. ~~The read-only information from the Organ Donor Internet~~
31 ~~site will be used for the sole purpose of seeking consent from the individual's next of~~
32 ~~kin for organ, tissue, or eye donation.~~ Employees of the Division who provide access to
33 or disclosure of information in good-faith compliance with this section are not liable in
34 damages for access to or disclosure of the information.

35 (b) When accessing and using information obtained from the ~~Organ Donor~~
36 ~~Internet site,~~ Donor Registry, federally designated organ procurement organizations and
37 eye banks shall comply with the requirements of Part 33A of Article 16 of Chapter
38 130A of the General Statutes.

39 (c) Personally identifiable information on a donor registry about a donor or
40 prospective donor may not be used or disclosed without the express consent of the
41 donor, prospective donor, or person that made the anatomical gift for any purpose other
42 than to determine, at or near death of the donor or prospective donor, whether the donor
43 or prospective donor has made, amended, or revoked an anatomical gift.

1 (d) This section does not prohibit any person from creating or maintaining a
2 donor registry that is not established by or under contract with the State. Any such
3 registry must comply with subsections (b) and (c) of this section."

4 **SECTION 3.(a)** G.S. 130A-410, 130A-411, 130A-412.1, and 130A-412.2
5 are recodified under Part 3A of Article 16 of Chapter 130A of the General Statutes, as
6 enacted in Section 1 of this act, as G.S. 130A-412.30, 130A-412.31, 130A-412.32, and
7 130A-412.33 respectively.

8 **SECTION 3.(b)** Except as provided in subsection (a) of this section, Part 3
9 of Article 16 of Chapter 130A of the General Statutes is repealed.

10 **SECTION 4.** G.S. 130A-412.1(e), as recodified as G.S. 130A-412.32(e) in
11 Section 3(a) of this act, reads as rewritten:

12 "(e) Each hospital shall have a signed agreement with its federally designated
13 organ procurement organization that addresses the requirements of this section and the
14 requirements of ~~G.S. 130A-412.2~~. G.S. 130A-412.33."

15 **SECTION 5.** G.S. 130A-412.2(c), as recodified as G.S. 130A-412.33(c) in
16 Section 3 of this act, reads as rewritten:

17 "(c) The federally designated organ procurement organization or tissue bank shall,
18 working collaboratively with the hospital, request consent for organ or tissue donation
19 in the order of priority established under ~~G.S. 130A-404(b)~~ G.S. 130A-412.11 and shall
20 have designated, trained staff available to perform the consent process 24 hours a day,
21 365 days a year."

22 **SECTION 6.** G.S. 130A-412.2(e), as recodified as G.S. 130A-412.33(e) in
23 Section 3 of this act, reads as rewritten:

24 "(e) All hospital and patient information, interviews, reports, statements,
25 memoranda, and other data obtained or created by a tissue bank or federally designated
26 organ procurement organization from the medical records review described in
27 ~~G.S. 130A-412.1~~ G.S. 130A-412.33 shall be privileged and confidential and may be
28 used by the tissue bank or federally designated organ procurement organization only for
29 the purposes set forth in ~~G.S. 130A-412.1~~ G.S. 130A-412.33 and shall not be subject to
30 discovery or introduction as evidence in any civil action, suit, or proceeding. However,
31 hospital and patient information, interviews, reports, statements, memoranda, and other
32 data otherwise available are not immune from discovery or use in a civil action, suit, or
33 proceeding merely because they were obtained or created by a tissue bank or federally
34 designated organ procurement organization from the medical records review described
35 in ~~G.S. 130A-412.1~~. G.S. 130A-412.33."

36 **SECTION 7.** G.S. 20-7.3 reads as rewritten:

37 "**§ 20-7.3. Availability of organ, eye, and tissue donor cards at motor vehicle**
38 **offices.**

39 The Division shall make organ, eye, and tissue donor cards available to interested
40 individuals in each office authorized to issue drivers licenses or special identification
41 cards. The Division shall obtain donor cards from qualified organ, eye, or tissue
42 procurement organizations or tissue banks, as defined in ~~G.S. 130A-403~~.
43 G.S. 130A-412.4(31). The Division shall offer organ donation information and a donor

1 card to each applicant for a drivers license. The organ donation information shall
2 include the following:

3 (1) A statement informing the individual that federally designated organ
4 procurement organizations and eye banks have read-only access to the
5 Department-operated Organ Donor Registry Internet site-site (hereafter
6 "Donor Registry") listing those individuals who have stated to the
7 Division of Motor Vehicles the individual's intent to be an organ donor
8 and have an organ donation symbol on the individual's drivers license
9 or special identification card.

10 (2) The type of information that will be made available on the ~~Organ~~
11 ~~Donor Internet site-Donor Registry.~~"

12 **SECTION 8.** G.S. 14-401.12(b)(2) reads as rewritten:

13 "(b) Definitions. – Unless a different meaning is required by the context, the
14 following terms as used in this section have the meanings hereinafter respectively
15 ascribed to them:

16 . . .

17 (2) "Contribution" shall mean any promise, gift, bequest, devise or other
18 grant for consideration or otherwise, of any money or property of any
19 kind or value, including the promise to pay, which contribution is
20 wholly or partly induced by a solicitation. The term "contribution"
21 shall not include payments by members of an organization for
22 membership fees, dues, fines or assessments, or for services rendered
23 to individual members, if membership in such organization confers a
24 bona fide right, privilege, professional standing, honor or other direct
25 benefit, other than the right to vote, elect officers, or hold offices; nor
26 any money, credit, financial assistance or property received from any
27 governmental authority; nor any donation of blood or any anatomical
28 gift made pursuant to the Revised Uniform Anatomical Gift Act.
29 Reference to dollar amounts of "contributions" or "solicitations" in this
30 section means, in the case of payments or promises to pay for
31 merchandise or rights of any description, the value of the total amount
32 paid or promised to be paid for such merchandise or rights, and not
33 merely that portion of the purchase price to be applied to a charitable
34 purpose."

35 **SECTION 9.** G.S. 130A-33.30 reads as rewritten:

36 "**§ 130A-33.30. Commission of Anatomy – Creation; powers and duties.**

37 There is created the Commission of Anatomy in the Department with the power and
38 duty to adopt rules for the distribution of dead human bodies and parts thereof for the
39 purpose of promoting the study of anatomy in the State of North Carolina. The
40 Commission is authorized to receive dead bodies pursuant to ~~G.S. 130A-415~~
41 G.S. 130A-412.13 and to be a donee of a body or parts thereof pursuant to Part ~~3,3A,~~
42 Article 16 of Chapter 130A of the General Statutes known as the Revised Uniform
43 Anatomical Gift Act and to distribute such bodies or parts thereof pursuant to the rules
44 adopted by the Commission."

1 **SECTION 10.** G.S. 130A-466 reads as rewritten:

2 "**§ 130A-466. Filing requirements.**

3 (a) A person may submit any of the following documents and the revocations of
4 these documents to the Secretary of State for filing in the Advance Health Care
5 Directive Registry established pursuant to this Article:

6 (1) A health care power of attorney under Article 3 of Chapter 32A of the
7 General Statutes.

8 (2) A declaration of a desire for a natural death under Article 23 of
9 Chapter 90 of the General Statutes.

10 (3) An advance instruction for mental health treatment under Part 2 of
11 Article 3 of Chapter 122C of the General Statutes.

12 (4) A declaration of an anatomical gift under Part 33A of Article 16 of
13 Chapter 130A of the General Statutes.

14 (b) Any document and any revocation of a document submitted for filing in the
15 registry shall be notarized regardless of whether notarization is required for its validity.
16 This subsection does not apply to ~~the document~~ a declaration of an anatomical gift
17 described in subdivision (a)(4) of this section.

18 (c) The document may be submitted for filing only by the person who executed
19 the document.

20 (d) The person who submits the document shall supply a return address.

21 (e) The document shall be accompanied by any fee required by this Article."

22 **SECTION 11.** The North Carolina Department of Transportation, Division
23 of Motor Vehicles, in cooperation with the License to Give Trust Fund Commission,
24 shall use available grant-in-aid funds from the State and federal governments and other
25 sources to enhance online access such that donors and prospective donors may update,
26 amend, or revoke information on the donor's or prospective donor's drivers license or
27 donor card.

28 **SECTION 12.** This act modifies, limits, and supersedes the Electronic
29 Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does
30 not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. § 7001, or authorize
31 electronic delivery of any of the notices described in section 103(b) of that act, 15
32 U.S.C. § 7003(b).

33 **SECTION 13.** The North Carolina General Statutes Commission ("General
34 Statutes Commission") shall review G.S. 130A-391, G.S. 90-602, and other statutes
35 related to organ donation to determine whether the statutes should be amended to be
36 consistent with and conform to the Revised Uniform Anatomical Gift Act as enacted in
37 this act. The General Statutes Commission shall make its recommendations upon the
38 convening of the 2008 Regular Session of the 2007 General Assembly.

39 **SECTION 14.** This act becomes effective October 1, 2007.