

LEGISLATIVE BILL 799

Approved by the Governor May 26, 1971

Introduced by Fred W. Carstens, 30th District; David H. Stahmer, 8th District

AN ACT to adopt the Uniform Anatomical Gift Act.
Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

- (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 thereof;
- (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 thereof, 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 parts 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; and
- (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.

Sec. 2. (1) Any individual of sound mind and twenty years of age or more may give all or any part of his body for any purposes specified in section 3 of this act, the gift to take effect upon death; Provided, that

the next of kin of the decedent may, for religious, emotional or other reasons, revoke such donation by notification to the donee.

(2) 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 3 of this act:

- (a) The spouse,
- (b) An adult son or daughter,
- (c) Either parent,
- (d) An adult brother or sister,
- (e) A guardian of the person of the decedent at the time of his death, and
- (f) Any other person authorized or under obligation to dispose of the body.

(3) 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 shall not accept the gift. The persons authorized by this subsection may make the gift after death or immediately before death.

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

(5) The rights of the donee created by the gift are paramount to the rights of others except as provided by subdivision (4) of section 7 of this act.

Sec. 3. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

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

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

(3) The State Anatomical Board, any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) Any specified individual for therapy or transplantation needed by him.

Sec. 4. (1) A gift of all or part of the body under subdivision (1) of section 2 of this act 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.

(2) A gift of all or part of the body under subdivision (1) of section 2 of this act 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 his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(3) 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 the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee.

(4) Notwithstanding subdivision (2) of section 7 of this act, 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.

(5) Any gift by a person designated in subdivision (2) of section 2 of this act shall be made by a document signed by him, or made by his telegraphic, recorded telephonic or other recorded message.

Sec. 5. If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to

expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, medical or dental school, State Anatomical Board, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

Sec. 6. (1) If the will, card or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

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

(b) An oral statement made in the presence of two persons and communicated to the donee;

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

(d) A signed card or document found on his person or in his effects.

(2) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) of this section or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(3) Any 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 (1) of this section.

Sec. 7. (1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he 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.

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

(3) A person who acts in good faith in accord with the terms of this act, 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.

(4) The provisions of this act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

Sec. 8. Any individual of sound mind and twenty years of age or more may consent to donate whole blood and other human tissues such as corneas, bones or organs, for the purpose of injecting, transfusing or transplanting any of them in the human body.

Sec. 9. The availability of scientific knowledge, skills and materials for the transplantation, injection, transfusion or transfer of human tissue, organs, blood and components thereof is important to the health and welfare of the people of this state. The imposition of legal liability without fault upon the persons and organizations engaged in such scientific procedures inhibits the exercise of sound medical judgment and restricts the availability of important scientific knowledge, skills and materials. It is therefore the public policy of this state to promote the health and welfare of the people by limiting the legal liability arising out of such scientific procedures to the instances of negligence or willful misconduct.

Sec. 10. No physician, surgeon, hospital, blood bank, tissue bank or other person or entity who donates, obtains, prepares, transplants, injects, transfuses or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing or transferring any tissue, organ, blood or component thereof from one or more human beings, living or dead, to another human being, shall be liable in damages as a result of any such activity, save and except that each such person or entity shall remain liable in damages for his or its own negligence or willful misconduct only.

Sec. 11. This act shall be construed as to effectuate its general purpose to make uniform the law

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of those states which enact it.

Sec. 12. This act may be cited as the Uniform Anatomical Gift Act.