

Article 16.

Postmortem Investigation and Disposition.

Part 1. Postmortem Medicolegal Examinations and Services.

**§ 130A-377. Establishment and maintenance of central and district offices.**

The Department shall establish and maintain a central office with appropriate facilities and personnel for postmortem medicolegal examinations. District offices, with appropriate facilities and personnel, may also be established and maintained if considered necessary by the Department for the proper management of postmortem examinations. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

**§ 130A-378. Qualifications and appointment of the Chief Medical Examiner.**

The Chief Medical Examiner shall be a forensic pathologist certified by the American Board of Pathology and licensed to practice medicine. The Chief Medical Examiner shall be appointed by the Secretary. (1983, c. 891, s. 2.)

**§ 130A-379. Duties of the Chief Medical Examiner.**

The Chief Medical Examiner shall perform postmortem medicolegal examinations as provided in this Part. The Chief Medical Examiner may, upon request, provide instruction in health science, legal medicine and other subjects related to his duties at The University of North Carolina, the North Carolina Justice Academy and other institutions of higher learning. (1983, c. 891, s. 2.)

**§ 130A-380. The Chief Medical Examiner's staff.**

The Chief Medical Examiner may employ qualified pathologists to serve as Associate and Assistant Medical Examiners in the central and district offices. The Associate and Assistant Medical Examiners shall perform duties assigned by the Chief Medical Examiner. Forensic chemists may be employed by the Chief Medical Examiner to provide toxicological and related support. (1983, c. 891, s. 2.)

**§ 130A-381. Additional services and facilities.**

In order to provide proper facilities for investigating deaths as authorized in this Part, the Chief Medical Examiner may arrange for the use of existing public or private laboratory facilities. Each county shall provide or contract for an appropriate facility for the examination and storage of bodies under Medical Examiner jurisdiction. The Chief Medical Examiner may contract with qualified persons to perform or to provide support services for autopsies and other studies and investigations. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 2007-187, s. 5.)

**§ 130A-382. County medical examiners; appointment; term of office; vacancies; training requirements; revocation for cause.**

(a) The Chief Medical Examiner shall appoint two or more county medical examiners for each county for a three-year term. In appointing medical examiners for each county, the Chief Medical Examiner shall give preference to physicians licensed to practice medicine in this State but may also appoint licensed physician assistants, nurse practitioners, nurses, or emergency medical technician paramedics. A medical examiner

may serve more than one county. The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner to do so.

(b) County medical examiners shall complete continuing education training as directed by the Office of the Chief Medical Examiner and based upon established and published guidelines for conducting death investigations. The continuing education training shall include training regarding sudden unexpected death in epilepsy. The Office of the Chief Medical Examiner shall annually update and publish these guidelines on its Internet Web site. Newly appointed county medical examiners shall complete mandatory orientation training as directed by the Office of the Chief Medical Examiner within 90 days of their appointment.

(c) The Chief Medical Examiner may revoke a county medical examiner's appointment for failure to adequately perform the duties of the office after providing the county medical examiner with written notice of the basis for the revocation and an opportunity to respond. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 187, ss. 2-4; 1983, c. 891, s. 2; 2007-187, s. 4; 2014-100, s. 12E.6(a); 2015-211, s. 1.)

#### **§ 130A-383. Medical examiner jurisdiction.**

(a) Upon the death of any person resulting from violence, poisoning, accident, suicide or homicide; occurring suddenly when the deceased had been in apparent good health or when unattended by a physician; occurring in a jail, prison, correctional institution or in police custody; occurring in State facilities operated in accordance with Part 5 of Article 4 of Chapter 122C of the General Statutes; occurring pursuant to Article 19 of Chapter 15 of the General Statutes; or occurring under any suspicious, unusual or unnatural circumstance, the medical examiner of the county in which the body of the deceased is found shall be notified by a physician in attendance, hospital employee, law-enforcement officer, funeral home employee, emergency medical technician, relative or by any other person having suspicion of such a death. No person shall disturb the body at the scene of such a death until authorized by the medical examiner unless in the unavailability of the medical examiner it is determined by the appropriate law enforcement agency that the presence of the body at the scene would risk the integrity of the body or provide a hazard to the safety of others. For the limited purposes of this Part, expression of opinion that death has occurred may be made by a nurse, an emergency medical technician or any other competent person in the absence of a physician.

(b) The discovery of anatomical material suspected of being part of a human body shall be reported to the medical examiner of the county in which the material is found.

(c) Upon completion of the investigation and in accordance with the rules of the Commission, the medical examiner shall release the body to the next of kin or other interested person who will assume responsibility for final disposition. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1983, c. 891, s. 2; 1989, c. 353, s. 1; 2008-131, s. 2.)

#### **§ 130A-384. Notification concerning out-of-state body.**

When a body is brought into this State for disposal and there is reason to believe either that the death was not investigated properly or that there is not an adequate certificate of death, the body shall be reported to a medical examiner in the county where the body resides or to the Chief

Medical Examiner. These deaths may be investigated by the same procedure as deaths occurring in this State under G.S. 130A-383. (1983, c. 891, s. 2.)

**§ 130A-385. Duties of medical examiner upon receipt of notice; reports; copies.**

(a) Upon receipt of a notification under G.S. 130A-383, the medical examiner shall take charge of the body, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a full report to the Chief Medical Examiner on forms prescribed for that purpose.

The Chief Medical Examiner or the county medical examiner is authorized to inspect and copy the medical records of the decedent whose death is under investigation. In addition, in an investigation conducted pursuant to this Article, the Chief Medical Examiner or the county medical examiner is authorized to inspect all physical evidence and documents which may be relevant to determining the cause and manner of death of the person whose death is under investigation, including decedent's personal possessions associated with the death, clothing, weapons, tissue and blood samples, cultures, medical equipment, X rays and other medical images. The Chief Medical Examiner or county medical examiner is further authorized to seek an administrative search warrant pursuant to G.S. 15-27.2 for the purpose of carrying out the duties imposed under this Article. In addition to the requirements of G.S. 15-27.2, no administrative search warrant shall be issued pursuant to this section unless the Chief Medical Examiner or county medical examiner submits an affidavit from the office of the district attorney in the district in which death occurred stating that the death in question is not under criminal investigation.

The Chief Medical Examiner shall provide directions as to the nature, character and extent of an investigation and appropriate forms for the required reports. The facilities of the central and district offices and their staff services shall be available to the medical examiners and designated pathologists in their investigations.

(b) The medical examiner shall complete a certificate of death, stating the name of the disease which in his opinion caused death. If the death was from external causes, the medical examiner shall state on the certificate of death the means of death, and whether, in the medical examiner's opinion, the manner of death was accident, suicide, homicide, execution by the State, or undetermined. The medical examiner shall also furnish any information as may be required by the State Registrar of Vital Statistics in order to properly classify the death.

(c) The Chief Medical Examiner shall have authority to amend a medical examiner death certificate.

(d) A copy of the report of the medical examiner investigation may be forwarded to the appropriate district attorney.

(e) In cases where death occurred due to an injury received in the course of the decedent's employment, the Chief Medical Examiner shall forward to the Commissioner of Labor a copy of the medical examiner's report of the investigation, including the location of the fatal injury and the name and address of the decedent's employer at the time of the fatal injury. The Chief Medical Examiner shall forward this report within 30 days of receipt of the information from the medical examiner.

(f) If a death occurred in a facility licensed subject to Article 2 or Article 3 of Chapter 122C of the General Statutes, or Articles 1 or 1A of Chapter 131D of the General Statutes, and the deceased was a client or resident of the facility or a recipient of facility services at the time of death, then the Chief Medical Examiner shall forward a copy of the medical examiner's report to the Secretary of Health and Human Services within 30 days of receipt of the report from the

medical examiner. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1977, 2nd Sess., c. 1145; 1983, c. 891, s. 2; 1989, c. 353, s. 2; c. 797; 1991 (Reg. Sess., 1992), c. 894, s. 6; 2000-129, s. 4.)

**§ 130A-386. Subpoena authority.**

The Chief Medical Examiner and the county medical examiners are authorized to issue subpoenas for the attendance of persons and for the production of documents as may be required by their investigation. (1983, c. 891, s. 2.)

**§ 130A-387. Fees.**

For each investigation and prompt filing of the required report, the medical examiner shall receive a fee paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be two hundred dollars (\$200.00). (1983, c. 891, s. 2; 1991, c. 463, s. 1; 2005-368, s. 1; 2015-241, s. 12E.6(a).)

**§ 130A-388. Medical examiner's permission necessary before embalming, burial and cremation.**

(a) No person knowing or having reason to know that a death may be under the jurisdiction of the medical examiner pursuant to G.S. 130A-383 or 130A-384, shall embalm, bury or cremate the body without the permission of the medical examiner.

(b) A dead body shall not be cremated or buried at sea unless a medical examiner certifies that he has inquired into the cause and the manner of death and has the opinion that no further examination is necessary. This subsection shall not apply to deaths occurring less than 24 hours after birth or to deaths of patients resulting only from natural disease and occurring in a licensed hospital unless the death falls within the jurisdiction of the medical examiner under G.S. 130A-383 or 130A-384. The Commission is authorized to adopt rules creating additional exceptions to this subsection. For making this certification, the medical examiner shall be entitled to a fee in an amount determined reasonable and appropriate by the Secretary, not to exceed fifty dollars (\$50.00), to be paid by the applicant. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4; 1967, c. 1154, s. 1; 1971, c. 444, s. 7; 1973, c. 873, s. 7; 1983, c. 891, s. 2.)

**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report shall be furnished to any person upon request. The fee for the autopsy or other study shall be two thousand eight hundred dollars (\$2,800) to be paid as follows:

- (1) Except as provided in subdivision (2) of this subsection, the county in which the deceased resided shall pay a fee of one thousand seven hundred fifty dollars (\$1,750) and the State shall pay the remaining balance of one thousand fifty dollars (\$1,050).
- (2) If the death or fatal injury occurred outside the county in which the deceased resided, the State shall pay the entire fee in the amount of two thousand eight hundred dollars (\$2,800).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy, unless the deceased's health care power of attorney granted authority for such decisions to the health care agent. If the Chief Medical Examiner or a designated pathologist performs the autopsy at the request of the next of kin, the cost shall be paid by the next of kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1973, c. 47, s. 2; c. 476, s. 128; 1975, c. 9; 1981, c. 187, s. 7; c. 562, p. 5; 1983, c. 891, s. 2; 1991, c. 463, s. 2; 1998-212, s. 29A.10(a); 2005-351, s. 4; 2005-393, s. 2; 2006-226, s. 32; 2013-360, s. 12E.8(a); 2015-241, s. 12E.5(a).)

### **§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Except as otherwise provided by law, any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public. For purposes of this section, the Chief Medical Examiner shall be the custodian of all autopsy photographs or video or audio recordings unless the photographs or recordings were taken by or at the direction of an investigating medical examiner and the investigating medical examiner retains the original photographs or recordings. If the investigating medical examiner has retained the original photographs or recordings, then the investigating medical examiner is the custodian of the photographs or video or audio recordings and must allow the public to inspect and examine them in accordance with this subsection.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

- (1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
- (2) Investigating Medical Examiner.
- (3) District attorney.

(4) Superior court judge.

(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) A physician licensed to practice in North Carolina who uses a copy of the photographs or video or audio recording to confer with attorneys or others with a bona fide professional need to use or understand forensic science, provided that the physician promptly returns the copy to the custodian.

(4) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class 2 misdemeanor.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure to persons other than the parties and attorneys to the proceeding of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class 2 misdemeanor, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes, copies, or otherwise creates an image of an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class 1 misdemeanor. (2005-393, s. 3.)

#### **§ 130A-390. Exhumations.**

(a) In any case of death described in G.S. 130A-383 or 130A-384 where the body is buried without investigation by a medical examiner as to the cause and manner of death or where sufficient cause develops for further investigation after a body is buried as determined by a county medical examiner or the Chief Medical Examiner, the Chief Medical Examiner shall authorize an investigation and send a report of the investigation with recommendations to the appropriate district attorney. The district attorney may forward the report to the superior court judge and petition for disinterment. The judge may order that the body be exhumed and that an autopsy be performed by the Chief Medical Examiner. A report of the autopsy and other pathological studies shall be delivered to the judge. The cost of the exhumation, autopsy, transportation and disposition of the body shall be paid by the State. However, if the deceased is a resident of the county in which death or fatal injury occurred, that county shall pay the cost.

(b) Any person may petition a judge of the superior court for an order of exhumation. Upon showing of sufficient cause, the judge may order the body exhumed. The cost incurred shall be assigned to the petitioner.

(c) Without applying for a judicial exhumation order, the next-of-kin of a deceased person may have the remains exhumed, examined by the Chief Medical Examiner and redispersed. The cost shall be paid by the next-of-kin. (1983, c. 891, s. 2; 1991, c. 463, s. 3.)

**§ 130A-391:** Repealed by Session Laws 2008-153, s. 3, effective August 2, 2008.

#### **§ 130A-392. Reports and records as evidence.**

Reports of investigations made by a county medical examiner or by the Chief Medical Examiner and toxicology and autopsy reports made pursuant to this Part may be received as

evidence in any court or other proceeding. Copies of records, photographs, laboratory findings and records in the Office of the Chief Medical Examiner, any county medical examiner or designated pathologist, when duly certified, shall have the same evidentiary value as the original. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 187, s. 8; 1983, c. 891, s. 2.)

**§ 130A-393. Rules.**

The Commission shall adopt rules to carry out the intent and purpose of this Part. (1967, c. 1154, s. 1; 1973, c. 476, s. 128; 1981, c. 614, s. 15; 1983, c. 891, s. 2.)

**§ 130A-394. Coroner to hold inquests.**

In every case requiring the medical examiner to be notified, as provided by G.S. 130A-383, the coroner shall be notified by the medical examiner, and the coroner shall hold an inquest and preliminary hearing in those instances as required in G.S. 152-7. The coroner shall file a written report of his investigation with the district attorney of the superior court and the medical examiner. The body shall remain in the custody and control of the medical examiner. However, if a county has abolished the office of coroner pursuant to the provisions of Chapter 152A at a time when Chapter 152A was in effect in the county: (i) The provisions of this Article relating to coroner shall not be applicable to the county, (ii) the provisions of G.S. 152A-9 shall remain in full force and effect in the county, and (iii) Chapter 152 of the General Statutes shall not be applicable in the county. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1967, c. 1154, s. 1; 1969, c. 299; 1973, c. 47, s. 2; 1983, c. 891, s. 2; 1985, c. 462, s. 1.)

**§ 130A-395. Handling and transportation of bodies.**

(a) It shall be the duty of the physician licensed to practice medicine under Chapter 90 attending any person who dies and is known to have smallpox, plague, HIV infection, hepatitis B infection, rabies, or Jakob-Creutzfeldt to provide written notification to all individuals handling the body of the proper precautions to prevent infection. This written notification shall be provided to funeral service personnel at the time the body is removed from any hospital, nursing home, or other health care facility. When the patient dies in a location other than a health care facility, the attending physician shall notify the funeral service personnel verbally of the precautions required in subsections (b) and (c) as soon as the physician becomes aware of the death.

(b) The body of a person who died from smallpox or plague shall not be embalmed. The body shall be enclosed in a strong, tightly sealed outer case which will prevent leakage or escape of odors as soon as possible after death and before the body is removed from the hospital room, home, building, or other premises where the death occurred. This case shall not be reopened except with the consent of the local health director.

(c) Persons handling bodies of persons who died and were known to have HIV infection, hepatitis B infection, Jakob-Creutzfeldt, or rabies shall be provided written notification to observe blood and body fluid precautions. (1989, c. 698, s. 4.)

**§§ 130A-396 through 130A-397: Reserved for future codification purposes.**

Part 2. Autopsies.

**§ 130A-398. Limitation on right to perform autopsy.**

The right to perform an autopsy shall be limited to those cases in which:



- (1) The Chief Medical Examiner or a county medical examiner, acting pursuant to G.S. 130A-389, directs that an autopsy be performed;
- (2) The Commission of Anatomy, acting pursuant to G.S. 130A-415, has given written consent for an autopsy to be performed on an unclaimed body;
- (3) A prosecuting officer or district attorney, acting pursuant to G.S. 15-7 in case of homicide, directs that an autopsy be performed;
- (4) The decedent directs in writing prior to death that an autopsy be performed upon the occurrence of the decedent's death;
- (4a) The health care agent under a health care power of attorney with authority to make decisions with respect to autopsies requests that an autopsy be performed upon the deceased principal;
- (5) The personal representative of the estate of the decedent requests that an autopsy be performed upon the decedent; or
- (6) Any of the following persons, in order of priority, 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 opposition by a member of the same or prior class, authorizes an autopsy to be performed:
  - a. The spouse;
  - b. Any adult child or stepchild;
  - c. Any parent or stepparents;
  - d. Any adult sibling;
  - e. A guardian of the person of the decedent at the time of the decedent's death;
  - f. Any relative or person who accepts responsibility for final disposition of the body by other customary and lawful procedures;
  - g. Any person under obligation to dispose of the body. (1931, c. 152; 1933, c. 209; 1967, c. 1154, s. 4; 1969, c. 444; 1973, c. 47, s. 2; 1983, c. 891, s. 2; 2005-351, s. 5; 2006-226, s. 32.)

**§ 130A-399. Postmortem examination of inmates of certain public institutions.**

Upon the death of any inmate of an institution maintained by the State, or a city, county, or other political subdivision of the State, for the care of individuals with a sickness, mental illness, or intellectual disability, the administrator of the institution in which the death occurs may authorize a postmortem examination of the deceased person. The examination shall be of a scope and nature necessary to promote knowledge of the human organism and its disorders. (1943, c. 87, s. 1; 1983, c. 891, s. 2; 2018-47, s. 10(a).)

**§ 130A-400. Written consent for postmortem examinations required.**

An administrator of an institution shall not authorize a postmortem examination described in G.S. 130A-399 without first securing the written consent of the deceased person's spouse, one of the next-of-kin or nearest known relative, or other person charged by law with the duty of burial, in the order named and as known. A copy of the written consent shall be filed in the office of the administrator of the institution where the inmate died. (1943, c. 87, s. 3; 1983, c. 891, s. 2.)

**§ 130A-401. Postmortem examinations in certain medical schools.**

The postmortem examinations and studies authorized by G.S. 130A-399 may be made in the laboratories of medical schools of colleges and universities on conditions established by the administrator. (1943, c. 87, s. 2; 1983, c. 891, s. 2.)

### Part 3. Uniform Anatomical Gift Act.

§ 130A-402: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-403: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-404: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-405: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-406: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-407: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-408: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-409: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-410: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-411: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-412: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-412.1: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

§ 130A-412.2: Repealed by Session Laws 2007-538, s. 3(b), effective October 1, 2007.

### Part 3A. Revised Uniform Anatomical Gift Act.

#### § 130A-412.3. Short title.

This Part may be cited as the Revised Uniform Anatomical Gift Act. (2007-538, s. 1.)

#### § 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.
- (5) "Decedent" means a deceased individual whose body or body part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this Article, a fetus.
- (6) "Disinterested witness" means any individual except for the following:
  - a. The donor's: spouse, child, parent, sibling, grandchild, grandparent, or guardian.
  - b. An adult who exhibited special care and concern for the donor.
  - c. A person to whom an anatomical gift could pass under G.S. 130A-412.13.
- (7) "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 drivers license, identification card, or donor registry.
- (8) "Donor" means an individual whose body or body part is the subject of an anatomical gift.
- (9) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- (10) "Drivers license" means a license or permit issued by the North Carolina Department of Transportation, Division of Motor Vehicles, to operate a vehicle, whether or not conditions are attached to the license or permit.
- (11) "Eye bank" means an entity 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.
- (12) "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.
- (12a) "Health care decision" means any decision made regarding the health care of the prospective donor.
- (13) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.
- (14) "Identification card" means an identification card issued by the North Carolina Department of Transportation, Division of Motor Vehicles.
- (15) "Know" means to have actual knowledge.
- (16) "Minor" means an individual who is under 18 years of age.
- (17) "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.
- (18) "Parent" means a parent whose parental rights have not been terminated.
- (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 body 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 body 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 G.S. 130A-412.9 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or body 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 body 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. (2007-538, s. 1.)

**§ 130A-412.5. Applicability.**

This act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made. (2007-538, s. 1.)

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

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

- (1) The donor, if the donor is an adult or if the donor is a minor and is:
  - a. Emancipated; or
  - b. Authorized under State law to apply for a drivers license because the donor is at least 16 years of age;
- (2) An agent of the donor to the extent authorized under a power of attorney for health care or other record;
- (3) A parent of the donor, if the donor is an unemancipated minor; or
- (4) The donor's guardian. (2007-538, s. 1.)

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

- (a) A donor may make an anatomical gift by any of the following methods:
  - (1) By authorizing that a statement or symbol be imprinted on the donor's drivers license or identification card indicating that the donor has made an anatomical gift. Anatomical gifts made by this method shall not include a donation of tissue or the donor's body.
  - (2) In a will.
  - (3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness.
  - (4) As provided in subsection (b) of this section.
- (b) A donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may make a gift by a signed 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 subdivision (1) of this subsection.
- (c) Revocation, suspension, expiration, or cancellation of a drivers 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. (2007-538, s. 1.)

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

- (a) Subject to G.S. 130A-412.10, a donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 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) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or
  - (2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.
- (b) A record signed pursuant to sub-subdivision c. of subdivision (1) of subsection (a) of this section 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 subdivision (1) of this subsection.
- (c) Subject to G.S. 130A-412.10, a donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.
- (d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
- (e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section. (2007-538, s. 1.)

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

- (a) An individual may refuse to make an anatomical gift of the individual's body or body part by:
  - (1) A record signed by:
    - a. The individual; or
    - b. Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;
  - (2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or
  - (3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.
- (b) A record signed pursuant to sub-subdivision b. of subdivision (1) of subsection (a) of this section 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 subdivision (1) of this subsection.
- (c) An individual who has made a refusal may amend or revoke the refusal:
  - (1) In the manner provided in subsection (a) of this section for making a refusal;
  - (2) By subsequently making an anatomical gift pursuant to G.S. 130A-412.7 that is inconsistent with the refusal; or
  - (3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in G.S. 130A-412.10(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 body part bars all other persons from making an anatomical gift of the individual's body or body part. (2007-538, s. 1.)

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

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

- (1) The donor made an anatomical gift of the donor's body or body part under G.S. 130A-412.7.
- (2) The donor made an amendment to an anatomical gift of the donor's body or body part under G.S. 130A-412.8.

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

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

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

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a body part is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another body 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 G.S. 130A-412.6, an anatomical gift of a body part for one or more of the purposes set forth in G.S. 130A-412.6 is not a limitation on the making of an anatomical gift of the body part for any of the other purposes by the donor or any other person under G.S. 130A-412.7 or G.S. 130A-412.12.

(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 body 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. (2007-538, s. 1.)

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

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

- (1) An agent of the decedent at the time of death who could have made an anatomical gift under G.S. 130A-412.6(2) immediately before the decedent's death;
- (2) The spouse of 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 having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivision (a)(1), (3), (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under G.S. 130A-412.13 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) of this section is reasonably available to make or to object to the making of an anatomical gift. (2007-538, s. 1.)

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

(a) A person authorized to make an anatomical gift under G.S. 130A-412.11 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) of this section, an anatomical gift by a person authorized under G.S. 130A-412.11 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 G.S. 130A-412.11 may be:

- (1) Amended only if a majority of the reasonably available members agrees to the amending of the gift; or
- (2) Revoked only if a majority of the reasonably available members agrees 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) of this section is effective only if, before an incision has been made to remove a body part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation. (2007-538, s. 1.)

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

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



- (1) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, including the Commission on Anatomy, for research or education;
- (2) Subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the body part;
- (3) An eye bank or tissue bank.

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

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

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

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift 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 body parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

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

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

- (1) If the body part is an eye, the gift passes to the appropriate eye bank.
- (2) If the body part is tissue, the gift passes to the appropriate tissue bank.
- (3) If the body 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 subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

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

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

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in this act affects the allocation of organs for transplantation or therapy. (2007-538, s. 1.)

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

A search of an individual who is reasonably believed to be dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal, and, if applicable, notification of the hospital to which the individual is taken, shall be governed by G.S. 90-602. (2007-538, s. 1; 2008-153, s. 2.)

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

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

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under G.S. 130A-412.13. (2007-538, s. 1.)

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

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

(b) A procurement organization must be allowed reasonable access to information in the records of the North Carolina Department of Transportation, Division of Motor Vehicles, 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 body 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 body 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 Part, at any time after a donor's death, the person to which a body part passes under G.S. 130A-412.13 may conduct any reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

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

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

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

(h) Subject to G.S. 130A-412.13(i) and G.S. 130A-412.25, the rights of the person to which a body part passes under G.S. 130A-412.13 are superior to the rights of all others with respect to the body 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 Part, 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 body part, the person to which the body part passes under G.S. 130A-412.13, upon the death of the donor and before embalming, burial, or cremation, shall cause the body 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 body part from the body of a donor that the physician or technician is qualified to remove. (2007-538, s. 1.)

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

Each hospital in this State shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. (2007-538, s. 1.)

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

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

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a body part. (2007-538, s. 1.)

#### **§ 130A-412.19. Other prohibited acts.**

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 Class H felony and upon conviction may be fined up to fifty thousand dollars (\$50,000) for each offense. (2007-538, s. 1.)

#### **§ 130A-412.20. Immunity.**

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

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

(c) In determining whether an anatomical gift has been made, amended, or revoked under this Part, a person may rely upon representations of an individual listed in subdivisions (2) through (8) of G.S. 130A-412.11(a) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue. (2007-538, s. 1.)

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

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

- (1) This Part;
- (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. (2007-538, s. 1.)

**§ 130A-412.22. Donor registry.**

The online Organ Donor Registry Internet site established pursuant to G.S. 20-43.2 shall be the State donor registry for anatomical gifts made pursuant to this Part. Requirements for maintenance and use of the State donor registry shall be as provided under G.S. 20-43.2. (2007-538, s. 1.)

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

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

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

(c) A body part may not be removed from the body of a decedent under the jurisdiction of a medical examiner for transplantation, therapy, research, or education unless the body part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner 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 medical examiner from performing the medicolegal investigation upon the body or body parts of a decedent under the jurisdiction of the medical examiner.

(d) As used in this section and G.S. 130A-412.24, "medical examiner" includes the Chief Medical Examiner, a county medical examiner, or a designee of either. (2007-538, s. 1.)

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

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

(b) The medical examiner may conduct a medicolegal examination, including physical examination of a donor or prospective donor and review of 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 medical examiner or whose body would be under the medical examiner's jurisdiction upon death and that the medical examiner determines may be relevant to the investigation.

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

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

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

(f) If the medical examiner or designee allows recovery of a body part under subsection (d) or (e) of this section, the procurement organization shall provide the medical examiner or designee with a record describing the condition of the body part signed by the physician or technician who removes the body part and any other information and observations that would assist in the postmortem examination. (2007-538, s. 1.)

**§ 130A-412.25:** Reserved for future codification purposes.

**§ 130A-412.26:** Reserved for future codification purposes.

**§ 130A-412.27:** Reserved for future codification purposes.

§ 130A-412.28: Reserved for future codification purposes.

§ 130A-412.29: Reserved for future codification purposes.

**§ 130A-412.30. Use of tissue declared a service; standard of care; burden of proof.**

The procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes, the rendition of a service by every participating person or institution. Whether or not any remuneration is paid, the service is declared not to be a sale of whole blood, plasma, blood products, blood derivatives or other human tissues, for any purpose. No person or institution shall be liable in warranty, express or implied, for the procurement, processing, distribution or use of these items but nothing in this section shall alter or restrict the liability of a person or institution in negligence or tort in consequence of these services. (1971, c. 836; 1983, c. 891, s. 2; 2007-538, s. 3(a).)

**§ 130A-412.31. Giving of blood by persons 16 years of age or more.**

A person who is 16 years of age or more may give or donate blood to an individual, hospital, blood bank or blood collection center without the consent of the parent or parents or guardian of the donor. It shall be unlawful for a person under the age of 18 years to sell blood. (1971, c. 10; c. 1093, s. 16; 1977, c. 373; 1983, c. 891, s. 2; 2007-538, s. 3(a); 2008-153, s. 9.)

**§ 130A-412.32. Duty of hospitals to establish organ procurement protocols.**

(a) In order to facilitate the goals of this Part, each hospital shall establish written protocols that:

- (1) Require that only the organ procurement organization designated by the Secretary of Health and Human Services be notified of all deaths or impending brain deaths meeting criteria for notification as established by the designated organ procurement organization; and
- (2) Ensure that notification required under subdivision (1) of this subsection be made as soon as it is determined that brain death is imminent or cardiac death has occurred.

(b) Hospitals shall provide their federally designated organ procurement organizations and tissue banks reasonable access to patients' medical records for the purpose of determining organ or tissue donation potential.

(c) The family of any person whose organ or tissue is donated for transplantation shall not be financially liable for any costs related to the evaluation of the suitability of the donor's organ or tissue for transplantation, or for any costs of retrieval of the organ or tissue.

(d) Each hospital shall provide its federally designated organ procurement organization with reasonable access during regular business hours to the medical records of deceased patients for the following purposes:

- (1) Determining the hospital's organ and tissue donation potential;
- (2) Assessing the educational needs of the hospital in regard to the organ and tissue donation process; and
- (3) Providing documentation to the hospital to evaluate the effectiveness of the hospital's efforts.

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

(f) The requirements of this section, or of any hospital procurement protocols established pursuant to this section, shall not exceed those provided for by the hospital organ protocol provisions of Title XI of the Social Security Act, except for the purposes of this section the term "organ and tissue donors" shall include cornea and tissue donors for transplantation.

(g) Hospitals and hospital personnel shall not be subject to civil or criminal liability nor to discipline for unprofessional conduct for actions taken in good faith to comply with this section. This subsection shall not provide immunity from civil liability arising from gross negligence. (1987, c. 719, s. 1; 1989, c. 537, s. 4; 1997-192, s. 2; 1997-456, s. 48; 2007-538, ss. 3(a), 4.)

**§ 130A-412.33. Duty of designated organ procurement organizations and tissue banks.**

(a) After notification regarding an impending brain death, brain death, or cardiac death has been made to the federally designated organ procurement organization, the federally designated organ procurement organization shall evaluate donation potential.

(b) The federally designated organ procurement organization or tissue bank shall assure that families of potential organ and tissue donors are made aware of the option of organ and tissue donation and their option to decline.

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

(d) The federally designated organ procurement organization or tissue bank shall encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential organ and tissue donors.

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

(f) If the hospital is made a party of any action, suit, or proceeding arising out of the failure of a federally designated organ procurement organization or tissue bank to comply with the requirements of this section, the hospital shall be held harmless from any and all liability and costs, including the amounts of judgments, settlements, fines, or penalties, and expenses and reasonable attorneys' fees incurred in connection with the action, suit, or proceeding. (1997-192, s. 3; 2007-538, ss. 3(a), 5, 6.)

Part 4. Human Tissue Donation Program.

**§ 130A-413. Coordinated human tissue donation program; legislative findings and purpose; program established.**

(a) The General Assembly finds that there is an increasing need for human tissues for transplantation purposes; that there is a continuing need for human tissues for the purposes of medical education and research; and that these needs are not being sufficiently filled at the present because of a shortage of human tissue donors. The General Assembly establishes a coordinated human tissue donation program to facilitate the acquisition and distribution of human tissues to promote the public health. For the purposes of this Part, the term "human tissue" includes cadavers.

(b) The Department shall establish and administer a coordinated program among departments and agencies of the State and all groups, both public and private, involved in the acquisition and distribution of human tissue to:

- (1) Increase awareness of the need for human tissue donations and of the methods by which these donations are made;
- (2) Increase awareness of the existing programs of human tissue transplantation and of medical research and education which employs human tissue and share information with the public;
- (3) Study the problems surrounding the acquisition and distribution of human tissue and make suggestions for their solution;
- (4) Disseminate information to health and other professionals concerning the techniques of human tissue retrieval and transplantation, the legalities involved in making anatomical gifts; and
- (5) Arrange for the quick and precise transportation of donated human tissue in emergency transplant situations.

(c) All departments and agencies of the State and county and municipal law-enforcement agencies shall cooperate with the coordinated human tissue donation program instituted by the Department. (1983, c. 891, s. 2.)

**§ 130A-414. Repealed by Session Laws 1987, c. 719, s. 2.**

Part 5. Disposition of Unclaimed Bodies.

**§ 130A-415. Unclaimed bodies; bodies claimed by the Lifeguardianship Council of The Arc of North Carolina, Inc.; disposition.**

(a) Any person, other than a person licensed as a funeral director or funeral service licensee in this State, including officers, employees, and agents of the State or of any unit of local government in the State, hospitals, nursing homes, or other institutions, having physical possession of a dead body shall make reasonable efforts to contact relatives of the deceased or other persons who may wish to claim the body for final disposition. If the body remains unclaimed for final disposition, the person having possession shall notify the Commission of Anatomy. Upon request of the Commission of Anatomy, the person having possession shall deliver the dead body to the Commission of Anatomy at a time and place specified by the Commission of Anatomy or shall permit the Commission of Anatomy to take and remove the body.

(a1) A dead body shall be deemed unclaimed if either of the following conditions apply:

- (1) No individual notifies the person in possession of the dead body within 10 days of the date of death that the individual wishes to dispose of the dead body.



- (2) All individuals who have expressed interest in arranging for disposition of the dead body have (i) ceased communicating with the person in possession of the dead body for five days, (ii) at least 10 days have passed from the date of death, and (iii) the person in possession of the dead body has used reasonable efforts to contact all individuals interested in arranging for final disposition.

(b) Unless the provisions of subsection (j) of this section apply, all dead bodies not claimed for final disposition within 10 days of the decedent's death may be received and delivered by the Commission of Anatomy pursuant to the authority contained in G.S. 130A-33.30 and this Part and in accordance with the rules of the Commission of Anatomy. Upon receipt of a body by the Commission of Anatomy all interests in and rights to the unclaimed dead body shall vest in the Commission of Anatomy. The recipient to which the Commission of Anatomy delivers the body shall pay all expenses for the embalming and delivery of the body and for the reasonable expenses arising from efforts to notify relatives or others.

(b1) The 10-day periods referenced in subdivisions (1) and (2) of subsection (a1) of this section may be shortened by the county director of social services upon determination that a dead body will not be claimed for final disposition within the 10-day period.

(c) Unless the provisions of subsection (j) of this section apply, if the Commission of Anatomy declines to receive a dead body, the person with possession shall inform the director of social services of the county that is responsible for the expense of the final disposition of the decedent. Upon notification, all interests in and rights to the abandoned dead body shall vest in the director of social services of that county, who then shall arrange for prompt final disposition of the body, either by cremation, hydrolysis, or burial.

(c1) Reasonable costs of disposition and of efforts made to notify relatives and others shall be considered funeral expenses and shall be paid in accordance with G.S. 28A-19-6 and G.S. 28A-19-8. If those expenses cannot be satisfied from the decedent's estate, they shall be borne by the decedent's county of residence. If the deceased is not a resident of this State, or if the county of residence is unknown, those expenses shall be borne by the county in which the death occurred or, if the county of residence and death of the decedent are unknown, the county where the deceased was located.

(d) No autopsy shall be performed on an unclaimed body without the written consent of the Commission of Anatomy except that written consent is not required for an autopsy performed pursuant to Part 2 of this Article.

(e) Due caution shall be taken to shield the unclaimed body from public view.

(f) Notwithstanding this section, an unclaimed body does not mean a dead body for which the deceased has made a gift pursuant to Part 3A of this Article.

(g) Nothing in this Part requires the officers, employees, or agents of a county to notify the Commission of Anatomy regarding the bodies of minors who were in the custody of the county at the time of death and whose final disposition will be arranged by the county. In the absence of notification, the expenses of the final disposition shall be a charge upon the county having custody.

(h) This Part does not apply to bodies within the jurisdiction of the medical examiner under G.S. 130A-383 or G.S. 130A-384.

(i) In addition to the other duties of the Commission of Anatomy, when the Commission of Anatomy is notified by the Lifeguardianship Council of The Arc of North Carolina, Inc., that the Council intends to claim a body, the Commission shall release the body to the Council. The Lifeguardianship Council shall notify the Commission of Anatomy within 24 hours after death of its intent to claim a body for burial or other humane and caring disposition.

(j) Any funeral director or funeral service licensee doing business within the State having physical possession of a dead body shall make reasonable efforts to contact relatives of the deceased or other persons who may wish to claim the body for final disposition. If the body remains unclaimed for final disposition for 10 days, or if the right to authorize the type, method, place, and disposition, of the dead body is waived under G.S. 130A-420(b1) or G.S. 90-210.124(b), and if all persons who have expressed interest in arranging for the disposition for the dead body have ceased communication with the person in possession of the dead body for five days, the dead body shall be deemed abandoned. If the funeral director or funeral service licensee receives the dead body from a person or entity listed in subsection (a) of this section, the 10-day period shall run concurrently with any period imposed on that person or entity. Any person having possession of an abandoned dead body shall notify the Commission of Anatomy. Upon request of the Commission of Anatomy, the person having possession of the abandoned dead body shall deliver the abandoned dead body to the Commission of Anatomy at a time and place specified by the Commission of Anatomy or shall permit the Commission of Anatomy to take and remove the abandoned dead body.

(k) If the Commissioner of Anatomy fails to request delivery of the abandoned dead body within two days of receipt of the notification required by subsection (j) of this section, or if the Commissioner of Anatomy declines delivery of the abandoned dead body, the funeral director or funeral services licensee shall notify the director of social services of the county where the abandoned dead body is located. The notice to the director of social services shall contain a sworn statement that (i) the body is an abandoned dead body, (ii) reasonable efforts have been made to inform relatives and others of the death, and (iii) the Commission of Anatomy has failed to request or has declined delivery of the abandoned dead body. Upon receipt of the sworn statement, the director of social services shall arrange for final disposition of the abandoned dead body and all interests in and rights to the abandoned dead body shall vest in the director of social services, who shall then arrange for prompt final disposition of the abandoned dead body by cremation, hydrolysis, or burial. Upon payment by the director of social services for final disposition of the abandoned dead body, the director shall have a claim of reasonable funeral expenses which shall be paid in accordance with G.S. 28A-19-6 and G.S. 28A-19-8. If those expenses cannot be satisfied from the decedent's estate, they shall be borne by the decedent's county of residence. If the decedent is not a resident of this State, or if the county of residence is unknown, those expenses shall be borne by the county in which the death occurred, or if the county of residence and death of the decedent is unknown, the county where the deceased was located. (1975, c. 694, s. 3; 1977, c. 458; 1983, c. 891, s. 2; 1987, c. 470; 1989, c. 222; c. 770, s. 75; 2008-153, s. 7; 2018-47, s. 10(b); 2018-78, s. 21.)

**§ 130A-416. Commission of Anatomy rules.**

The Commission of Anatomy is authorized to adopt rules necessary to implement the provisions of this Part. (1983, c. 891, s. 2.)

Part 6. Final Disposition or Transportation of Deceased Migrant Agricultural Workers and Their Dependents.

**§ 130A-417. Definitions.**

The following definitions shall apply throughout this Part:

- (1) "Dependent" means child, grandchild, spouse or parent of a migrant agricultural worker who moves with the migrant agricultural worker in response to the demand for seasonal agricultural labor.
- (2) "Migrant agricultural worker" means a worker who moves in response to the demand for seasonal agricultural labor. (1983, c. 891, s. 2.)

**§ 130A-418. Deceased migrant agricultural workers and their dependents.**

(a) Notwithstanding any other provisions of law, a person having knowledge of the death of a migrant agricultural worker or a worker's dependent shall without delay report the death to the department of social services in the county in which the body is located together with any information regarding the deceased including identity, place of employment, permanent residence, and the name, address and telephone number of any relative and any interested person. The county department of social services shall, within a reasonable time of receiving this report, transmit to the Department notice of the death and information received upon notification. The Department shall make reasonable effort to inform the next-of-kin and any interested person of the death.

(b) If the identity of the person cannot be determined within a reasonable period of time, or if the body is unclaimed 10 days after death, the body shall be offered to the Commission of Anatomy and, upon its request, shall be delivered to the Commission of Anatomy. If the Commission of Anatomy does not request an unclaimed body offered it or the estate, and if the relatives or other interested persons claiming the body are unable to provide for the final disposition of the migrant agricultural worker or dependent, the Department is authorized and directed to arrange for the final disposition of the decedent.

(c) If the estate, relatives or interested persons are able to provide for final disposition but are unable to effect the transportation of the decedent to the decedent's legal residence or the legal residence of the relatives or interested persons, the Department is authorized and directed to allocate a sum of not more than two hundred dollars (\$200.00) to defray the transportation expenses.

(d) The Secretary is authorized to adopt rules necessary to implement this section. (1975, c. 891; 1977, c. 648; 1983, c. 891, s. 2.)

**§ 130A-419. Reserved for future codification purposes.**

Part 7. Disposition of Body or Body Parts.

**§ 130A-420. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods in the following order:

- (1) Pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes.
  - (2) Pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes.
  - (3) Pursuant to a written will.
  - (4) Pursuant to a written statement other than a will signed by the individual and witnessed by two persons who are at least 18 years old.
- (a1) An individual at least 18 years of age may delegate his or her right to dispose of his or her own dead human body to any person by one of the following methods:
- (1) Any means authorized in subsection (a) of this section.
  - (2) By completing United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form. A delegation made by filling out this form shall only be effective if the individual dies under the circumstances described in 10 U.S.C. § 1481(a)(1) through (8). A delegation under this subdivision takes precedence over any of the methods set forth in this section.
- (a2) Unless expressly prohibited by the order of appointment, a guardian of the person shall have the authority to direct the final disposition of the remains of the ward through the methods authorized in subdivision (1) of subsection (a) of this section if executed before the death of the ward.
- (b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:
- (1) The surviving spouse.
  - (2) A majority of the surviving children over 18 years of age, who can be located after reasonable efforts.
  - (3) The surviving parents.
  - (4) A majority of the surviving siblings over 18 years of age, who can be located after reasonable efforts.
  - (5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.
  - (6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.
  - (7) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent.
  - (8) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution.

- (9) In the absence of any of the persons described in subdivisions (1) through (8) of this subsection, any person willing to assume responsibility for the disposition of the body.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63, or to permit modification of preneed contracts under G.S. 90-210.63A. If an individual is incompetent at the time of the decedent's death, the individual shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of an individual and the certification shall apply to the rights under this section only. Any individual under this section may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b1) A person who does not exercise his or her right to dispose of the decedent's body under subsection (b) of this section within five days of notification or 10 days from the date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section. Under G.S. 130A-415(c) or (j), upon such a waiver, and upon the Commission of Anatomy declining or failing to request delivery of the abandoned dead body, the director of social services of the county in which the dead body is located shall become vested with all interests and rights to the dead body and shall authorize and arrange for disposition by cremation, hydrolysis, or burial.

(b2) Once the burial of an individual is completed under the provisions of this section, the method and location of disposition shall not be changed unless otherwise authorized by law or by a court order upon a showing of good cause.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3A of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes. (1997-399, s. 34; 2007-531, s. 26; 2008-153, s. 8; 2010-191, s. 1; 2018-78, s. 22.)

**§ 130A-421. Reserved for future codification purposes.**