

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH30365-LN-16 (11/27)

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

Sponsors: Representatives Folwell, Holliman, Clary, and Wainwright (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"Article 16A.

"Revised Uniform Anatomical Gift Act.

"§ 130A-412.3. Short title.

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

"§ 130A-412.4. Definitions.

The following definitions apply in this Article.

(1) "Adult." – An individual who is at least 18 years of age.

(2) "Agent." – An individual:

a. Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

b. Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

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

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

44 **"§ 130A-412.5. Applicability.**

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

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

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

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

8 a. Emancipated; or

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

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

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

14 (4) The donor's guardian.

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

16 (a) A donor may make an anatomical gift:

17 (1) By authorizing a statement or symbol indicating that the donor has
18 made an anatomical gift to be imprinted on the donor's drivers license
19 or identification card;

20 (2) In a will;

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

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

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

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

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

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

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

42 **"§ 130A-412.8. Amending or revoking anatomical gift before donor's death.**

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

- 1 (1) A record signed by:
2 a. The donor;
3 b. The other person; or
4 c. Subject to subsection (b) of this section, another individual
5 acting at the direction of the donor or the other person if the
6 donor or other person is physically unable to sign; or
- 7 (2) A later-executed document of gift that amends or revokes a previous
8 anatomical gift or portion of an anatomical gift, either expressly or by
9 inconsistency.
- 10 (b) A record signed pursuant to sub-subdivision c. of subdivision (1) of
11 subsection (a) of this section must:
- 12 (1) Be witnessed by at least two adults, at least one of whom is a
13 disinterested witness, who have signed at the request of the donor or
14 the other person; and
- 15 (2) State that it has been signed and witnessed as provided in subdivision
16 (1) of this subsection.
- 17 (c) Subject to G.S. 130A-412.10, a donor or other person authorized to make an
18 anatomical gift under G.S. 130A-412.6 may revoke an anatomical gift by the
19 destruction or cancellation of the document of gift, or the portion of the document of
20 gift used to make the gift, with the intent to revoke the gift.
- 21 (d) A donor may amend or revoke an anatomical gift that was not made in a will
22 by any form of communication during a terminal illness or injury addressed to at least
23 two adults, at least one of whom is a disinterested witness.
- 24 (e) A donor who makes an anatomical gift in a will may amend or revoke the gift
25 in the manner provided for amendment or revocation of wills or as provided in
26 subsection (a) of this section.
- 27 **§ 130A-412.9. Refusal to make anatomical gift; effect of refusal.**
- 28 (a) An individual may refuse to make an anatomical gift of the individual's body
29 or part by:
- 30 (1) A record signed by:
31 a. The individual; or
32 b. Subject to subsection (b) of this section, another individual
33 acting at the direction of the individual if the individual is
34 physically unable to sign;
- 35 (2) The individual's will, whether or not the will is admitted to probate or
36 invalidated after the individual's death; or
- 37 (3) Any form of communication made by the individual during the
38 individual's terminal illness or injury addressed to at least two adults,
39 at least one of whom is a disinterested witness.
- 40 (b) A record signed pursuant to sub-subdivision b. of subdivision (1) of
41 subsection (a) of this section must:
- 42 (1) Be witnessed by at least two adults, at least one of whom is a
43 disinterested witness, who have signed at the request of the individual;
44 and

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

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

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

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

8 (3) By destroying or canceling the record evidencing the refusal, or the
9 portion of the record used to make the refusal, with the intent to revoke
10 the refusal.

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

15 **"§ 130A-412.10. Preclusive effect of an anatomical gift, amendment, or revocation.**

16 (a) Except as otherwise provided in subsection (g) of this section and subject to
17 subsection (f) of this section, in the absence of an express, contrary indication by the
18 donor, a person other than the donor is barred from making, amending, or revoking an
19 anatomical gift of a donor's body or part if the donor made an anatomical gift of the
20 donor's body or part under G.S. 130A-412.7 or an amendment to an anatomical gift of
21 the donor's body or part under G.S. 130A-412.8.

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

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

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

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

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

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

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

6 **"§ 130A-412.11. Who may make an anatomical gift of decedent's body or part.**

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

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

15 (2) The spouse of the decedent;

16 (3) Adult children of the decedent;

17 (4) Parents of the decedent;

18 (5) Adult siblings of the decedent;

19 (6) Adult grandchildren of the decedent;

20 (7) Grandparents of the decedent;

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

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

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

26 (b) If there is more than one member of a class listed in subsection (a)(1), (3),
27 (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an anatomical
28 gift may be made by a member of the class unless that member or a person to which the
29 gift may pass under G.S. 130A-412.13 knows of an objection by another member of the
30 class. If an objection is known, the gift may be made only by a majority of the members
31 of the class who are reasonably available.

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

35 **"§ 130A-412.12. Manner of making, amending, or revoking anatomical gift of**
36 **decedent's body or part.**

37 (a) A person authorized to make an anatomical gift under G.S. 130A-412.11 may
38 make an anatomical gift by a document of gift signed by the person making the gift or
39 by that person's oral communication that is electronically recorded or is
40 contemporaneously reduced to a record and signed by the individual receiving the oral
41 communication.

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

1 the prior class is reasonably available, the gift made by a person authorized under
2 G.S. 130A-412.11 may be:

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

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

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

12 **"§ 130A-412.13. Persons that may receive anatomical gift; purpose of anatomical**
13 **gift.**

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

16 (1) A hospital; accredited medical school, dental school, college, or
17 university; organ procurement organization; or other appropriate
18 person, for research or education;

19 (2) Subject to subsection (b) of this section, an individual designated by
20 the person making the anatomical gift if the individual is the recipient
21 of the part;

22 (3) An eye bank or tissue bank.

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

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

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

33 (2) If the part is tissue and the gift is for the purpose of transplantation or
34 therapy, the gift passes to the appropriate tissue bank.

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

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

41 (d) For the purpose of subsection (c) of this section, if there is more than one
42 purpose of an anatomical gift set forth in the document of gift but the purposes are not
43 set forth in any priority, the gift must be used for transplantation or therapy, if suitable.

1 If the gift cannot be used for transplantation or therapy, the gift may be used for
2 research or education.

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

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

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

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

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

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

17 (h) An anatomical gift of an organ for transplantation or therapy, other than an
18 anatomical gift under subsection (a)(2) of this section, passes to the organ procurement
19 organization as custodian of the organ.

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

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

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

32 **"§ 130A-412.14. Search and notification.**

33 (a) The following persons shall make a reasonable search of an individual who
34 the person reasonably believes is dead or near death for a document of gift or other
35 information identifying the individual as a donor or as an individual who made a
36 refusal:

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

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

42 (b) If a document of gift or a refusal to make an anatomical gift is located by the
43 search required by subdivision (a)(1) of this section and the individual or deceased

1 individual to whom it relates is taken to a hospital, the person responsible for
2 conducting the search shall send the document of gift or refusal to the hospital.

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

5 **"§ 130A-412.15. Delivery of document of gift not required; right to examine.**

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

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

13 **"§ 130A-412.16. Rights and duties of procurement organization and others.**

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

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

22 (c) When a hospital refers an individual at or near death to a procurement
23 organization, the organization may conduct any reasonable examination necessary to
24 ensure the medical suitability of a part that is or could be the subject of an anatomical
25 gift for transplantation, therapy, research, or education from a donor or a prospective
26 donor. During the examination period, measures necessary to ensure the medical
27 suitability of the part may not be withdrawn unless the hospital or procurement
28 organization knows that the individual expressed a contrary intent.

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

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

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

41 (g) Upon referral by a hospital under subsection (a) of this section, a procurement
42 organization shall make a reasonable search for any person listed in G.S. 130A-412.11
43 having priority to make an anatomical gift on behalf of a prospective donor. If a
44 procurement organization receives information that an anatomical gift to any other

1 person was made, amended, or revoked, it shall promptly advise the other person of all
2 relevant information.

3 (h) Subject to G.S. 130A-412.13(i) and G.S. 130A-412.25, the rights of the
4 person to which a part passes under G.S. 130A-412.13 are superior to the rights of all
5 others with respect to the part. The person may accept or reject an anatomical gift in
6 whole or in part. Subject to the terms of the document of gift and this Article, a person
7 that accepts an anatomical gift of an entire body may allow embalming, burial, or
8 cremation, and use of remains in a funeral service. If the gift is of a part, the person to
9 which the part passes under G.S. 130A-412.13, upon the death of the donor and before
10 embalming, burial, or cremation, shall cause the part to be removed without
11 unnecessary mutilation.

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

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

17 **"§ 130A-412.17. Coordination of procurement and use.**

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

20 **"§ 130A-412.18. Sale or purchase of parts prohibited.**

21 (a) Except as otherwise provided in subsection (b) of this section, a person, that
22 for valuable consideration, knowingly purchases or sells a part for transplantation or
23 therapy if removal of a part from an individual is intended to occur after the individual's
24 death commits a Class H felony and upon conviction is subject to a fine not exceeding
25 fifty thousand dollars (\$50,000) or imprisonment not exceeding five years, or both.

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

28 **"§ 130A-412.19. Other prohibited acts.**

29 A person that, in order to obtain a financial gain, intentionally falsifies, forges,
30 conceals, defaces, or obliterates a document of gift, an amendment or revocation of a
31 document of gift, or a refusal commits a Class H felony and upon conviction is subject
32 to a fine not exceeding fifty thousand dollars (\$50,000) or imprisonment not exceeding
33 five years, or both.

34 **"§ 130A-412.20. Immunity.**

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

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

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

1 **"§ 130A-412.21. Law governing validity; choice of law as to execution of document**
2 **of gift; presumption of validity.**

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

4 (1) This Article;

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

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

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

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

14 **"§ 130A-412.22. Donor registry.**

15 The online Organ Donor Registry Internet Site established pursuant to G.S. 20-43.2
16 shall be the State donor registry for anatomical gifts made pursuant to this Article.
17 Requirements for maintenance and use of the State donor registry shall be as provided
18 under G.S. 20-43.2.

19 **"§ 130A-412.23. Effect of anatomical gift on health care power of attorney.**

20 (a) The following definitions apply in this Article:

21 (1) "Advance health care directive." – A health care power of attorney
22 under G.S. 32A-16 or a record signed or authorized by a prospective
23 donor containing the prospective donor's direction concerning a health
24 care decision for the prospective donor.

25 (2) "Declaration." – A declaration of a desire for a natural death as
26 provided under Article 23 of Chapter 90 of the General Statutes.

27 (3) "Health care decision." – Any decision made regarding the health care
28 of the prospective donor.

29 (b) If a prospective donor has a declaration or advance health care directive,
30 measures necessary to ensure the medical suitability of an organ for transplantation or
31 therapy, may not be withheld or withdrawn from the prospective donor unless the
32 declaration expressly provides to the contrary.

33 **"§ 130A-412.24. Cooperation between a medical examiner and the procurement**
34 **organization.**

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

38 (b) If a medical examiner receives notice from a procurement organization that
39 an anatomical gift might be available or was made with respect to a decedent whose
40 body is under the jurisdiction of the medical examiner and a postmortem examination is
41 going to be performed, unless the medical examiner denies recovery in accordance with
42 G.S. 130A-412.25, the medical examiner or designee shall conduct a postmortem
43 examination of the body or the part in a manner and within a period compatible with its
44 preservation for the purposes of the gift.

1 (c) A part may not be removed from the body of a decedent under the jurisdiction
2 of a medical examiner for transplantation, therapy, research, or education unless the part
3 is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the
4 medical examiner may not be delivered to a person for research or education unless the
5 body is the subject of an anatomical gift. This subsection does not preclude a medical
6 examiner from performing the medicolegal investigation upon the body or parts of a
7 decedent under the jurisdiction of the medical examiner.

8 (d) As used in this section and G.S. 130A-412.25, 'medical examiner' includes
9 the Chief Medical Examiner, a county medical examiner, or a designee of either.

10 **"§ 130A-412.25. Facilitation of anatomical gift from decedent whose body is under**
11 **the jurisdiction of a medical examiner.**

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

21 (b) The medical examiner may conduct a medicolegal examination by reviewing
22 all medical records, laboratory test results, X-rays, other diagnostic results, and other
23 information that any person possesses about a donor or prospective donor whose body is
24 under the jurisdiction of the medical examiner, which the medical examiner determines
25 may be relevant to the investigation.

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

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

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

1 (f) Following the consultation under subsection (e) of this section, in the absence
2 of mutually agreed-upon protocols to resolve conflict between the medical examiner
3 and the procurement organization, if the medical examiner intends to deny recovery, the
4 medical examiner or designee, at the request of the procurement organization, shall
5 attend the removal procedure for the part before making a final determination not to
6 allow the procurement organization to recover the part. During the removal procedure,
7 the medical examiner or designee may allow recovery by the procurement organization
8 to proceed, or, if the medical examiner or designee reasonably believes that the part may
9 be involved in determining the decedent's cause or manner of death, deny recovery by
10 the procurement organization.

11 (g) If the medical examiner or designee denies recovery under subsection (f) of
12 this section, the medical examiner or designee shall:

- 13 (1) Explain in a record the specific reasons for not allowing recovery of
14 the part;
15 (2) Include the specific reasons in the records of the medical examiner;
16 and
17 (3) Provide a record with the specific reasons to the procurement
18 organization.

19 (h) If the medical examiner or designee allows recovery of a part under
20 subsections (d), (e), or (f) of this section, the procurement organization, upon request,
21 shall cause the physician or technician who removes the part to provide the medical
22 examiner with a record describing the condition of the part, a biopsy, a photograph, and
23 any other information and observations that would assist in the postmortem
24 examination.

25 (i) If a medical examiner or designee is required to be present at a removal
26 procedure under subsection (f) of this section, upon request the procurement
27 organization requesting the recovery of the part shall reimburse the medical examiner or
28 designee for the additional costs incurred in complying with subsection (f) of this
29 section."

30 **SECTION 2.(a) G.S. 130A-391 reads as rewritten:**

31 **"§ 130A-391. Corneal tissue removal.**

32 (a) A medical examiner or a regional pathologist may provide corneal tissue
33 from a decedent under the jurisdiction of the medical examiner or the regional
34 pathologist to the North Carolina Eye Bank or other procurement organization or donee
35 specified in G.S. 130A-405 under the following conditions: in accordance with
36 G.S. 130A-412.14, provided that the removal of the corneal tissue for transplant will not
37 interfere with any subsequent course of investigation or autopsy or alter the postmortem
38 facial appearance.

- 39 ~~(1) a. Consent from next of kin is obtained in accordance with~~
40 ~~G.S. 130A-404; or~~
41 ~~b.,e. Repealed by Session Laws 1983 (Regular Session, 1984), c.~~
42 ~~992, s. 1.~~
43 ~~d. No objections are known to the medical examiner or regional~~
44 ~~pathologist; and~~

1 (2) ~~The removal of the corneal tissue for transplant will not interfere with~~
2 ~~any subsequent course of investigation or autopsy or alter the~~
3 ~~postmortem facial appearance.~~

4 (b) If the requirements of subsection (a) of this section have been met, neither the
5 medical examiner, the regional pathologist, nor the donee shall be liable in any civil
6 action brought by the next of kin on the contention that authorization of next of kin was
7 required to remove the corneal tissue."

8 **SECTION 2.(b)** Part 1 of Article 16 of Chapter 130A of the General
9 Statutes is amended by adding the following new section to read:

10 **"§ 130A-396. Cooperation between medical examiner and organ procurement**
11 **organizations; facilitation of anatomical gift.**

12 A medical examiner having jurisdiction of a decedent's body shall comply with
13 G.S. 130A-412.24 and G.S. 130A-412.25 to facilitate the recovery of the decedent's
14 anatomical gift."

15 **SECTION 3.** G.S. 20-43.2 reads as rewritten:

16 **"§ 20-43.2. Internet access to organ donation records by organ procurement**
17 **organizations.**

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

43 (c) When accessing and using information obtained from the ~~Organ Donor~~
44 ~~Internet site,~~ Donor Registry, federally designated organ procurement organizations and

1 eye banks shall comply with the requirements of ~~Part 3~~ Article 16A of Chapter 130A of
2 the General Statutes.

3 (d) Personally identifiable information on a donor registry about a donor or
4 prospective donor may not be used or disclosed without the express consent of the
5 donor, prospective donor, or person that made the anatomical gift for any purpose other
6 than to determine, at or near death of the donor or prospective donor, whether the donor
7 or prospective donor has made, amended, or revoked an anatomical gift.

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

11 **SECTION 4.** The North Carolina Department of Transportation, Division of
12 Motor Vehicles, in cooperation with the License to Give Trust Fund Commission, shall
13 use available grant-in-aid funds from the State and federal governments and other
14 sources to enhance online access such that donors and prospective donors may update,
15 amend, or revoke information on the donor's or prospective donor's drivers license or
16 donor card.

17 **SECTION 5.** This act modifies, limits, and supersedes the Electronic
18 Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does
19 not modify, limit, or supersede Section 101(a) of that act, 15 U.S.C. § 7001, or authorize
20 electronic delivery of any of the notices described in Section 103(b) of that act, 15
21 U.S.C. § 7003(b).

22 **SECTION 6.(a)** G.S. 130A-410, 130A-411, 130A-412, 130A-412.1, and
23 130A-412.2 are recodified under Article 16A of Chapter 130A of the General Statutes,
24 as enacted by this act, as G.S. 130A-412.26, 130A-412.27, 130A-412.28, 130A-412.29,
25 and 130A-412.30 respectively.

26 **SECTION 6.(b)** Except as provided in subsection (a) of this section, Part 3
27 of Article 16 of Chapter 130A of the General Statutes is repealed.

28 **SECTION 7.** This act is effective when it becomes law.