

142C.3 Persons who may make — manner of making — amending or revoking — refusal to make anatomical gift before donor's death — preclusive effect.

1. *Who may make.* Subject to subsection 5, an anatomical gift of a donor's body or part may be made during the life of the donor for the purposes of transplantation, therapy, research, or education in the manner prescribed in subsection 2 by any of the following:

a. The donor if the donor is any of the following:

(1) An adult.

(2) A minor, if the minor is emancipated.

(3) A minor, if the minor is authorized under state law to apply for a driver's license or identification card because the minor is at least 14 years of age, and the minor authorizes a statement or symbol indicating an anatomical gift on a driver's license, identification card, or donor registry entry with the signed approval of a parent or guardian.

b. An agent of the donor, unless the durable power of attorney for health care or other record prohibits the agent from making the anatomical gift.

c. A parent of the donor, if the donor is an unemancipated minor.

d. The guardian of the donor.

2. *Manner of making.*

a. A donor may make an anatomical gift by any of the following means:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card.

(2) In a will.

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

(4) As provided in paragraph "b".

b. (1) A donor or other person authorized to make an anatomical gift under subsection 1 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on the donor registry.

(2) 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 shall meet all of the following requirements:

(a) 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 other person.

(b) State that the record has been signed and witnessed as provided in subparagraph division (a).

c. Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated shall 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.

3. *Amending or revoking gift before donor's death.*

a. Subject to subsection 5, a donor or other person authorized to make an anatomical gift under subsection 1 may amend or revoke an anatomical gift by any of the following means:

(1) A record signed by any of the following:

(a) The donor.

(b) The other person authorized to make an anatomical gift.

(c) Subject to paragraph "b", another individual acting at the direction of the donor or the other authorized person if the donor or other person is physically unable to sign the record.

(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 paragraph "a", subparagraph (1), subparagraph division (c), shall comply with all of the following:

(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 authorized person.

(2) State that the record has been signed and witnessed as provided in subparagraph (1).

c. Subject to subsection 5, a donor or other person authorized to make an anatomical gift under subsection 1 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 paragraph “a”.

4. *Refusal to make.*

a. An individual may refuse to make an anatomical gift of the individual’s body or part by any of the following means:

(1) A record signed by any of the following:

(a) The individual.

(b) Subject to paragraph “b”, another individual acting at the direction of the individual if the individual is physically unable to sign the record.

(2) The individual’s will, whether or not the will is admitted to probate or invalidated after the individual’s death.

(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 paragraph “a”, subparagraph (1), subparagraph division (b), shall comply with all of the following:

(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.

(2) State that the record has been signed and witnessed as provided in subparagraph (1).

c. An individual who has made a refusal may amend or revoke the refusal in accordance with any of the following:

(1) In the manner provided in paragraph “a” for making a refusal.

(2) By subsequently making an anatomical gift pursuant to subsection 2 that is inconsistent with the refusal.

(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 subsection 5, paragraph “h”, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual’s unrevoked refusal to make an anatomical gift of the individual’s body or part prohibits all other persons from making an anatomical gift of the individual’s body or part.

5. *Preclusive effect.*

a. *Donor gift or amendment — subsequent actions by others prohibited.* Except as otherwise provided in paragraph “g”, and subject to paragraph “f”, in the absence of a contrary indication by the donor, a person other than the donor is prohibited from making, amending, or revoking an anatomical gift of a donor’s body or part if the donor made an anatomical gift of the donor’s body or part under subsection 2 or an amendment to an anatomical gift of the donor’s body or part under subsection 3.

b. *Donor revocation not a refusal.* A donor’s revocation of an anatomical gift of the donor’s body or part under subsection 3 is not a refusal and does not prohibit another person specified in subsection 1 or section 142C.4 from making an anatomical gift of the donor’s body or part under subsection 2 or section 142C.4.

c. *Gift on amendment by another — subsequent actions by others prohibited.* If a person other than the donor makes an unrevoked anatomical gift of the donor’s body or part under subsection 2, or an amendment to an anatomical gift of the donor’s body or part under subsection 3, another person may not make, amend, or revoke the gift of the donor’s body or part under section 142C.4.

d. *Revocation by another not prohibitive of other gift.* A revocation of an anatomical gift of a donor’s body or part under subsection 3 by a person other than the donor does not prohibit another person from making an anatomical gift of the body or part under subsection 2 or section 142C.4.

e. *Gift of part not prohibitive of gift of another part.* In the absence of a contrary

indication by the donor or other person authorized to make an anatomical gift under subsection 1, an anatomical gift of a part is neither a refusal to donate another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another authorized person.

f. Gift for one purpose not prohibitive of another purpose. In the absence of a contrary indication by the donor or other person authorized to make an anatomical gift under subsection 1, an anatomical gift of a part for one or more of the purposes specified in subsection 1 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under subsection 2 or section 142C.4.

g. Unemancipated minor gift — parent revocation. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

h. Unemancipated minor refusal — parent revocation or amendment. If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

95 Acts, ch 39, §3; 2002 Acts, ch 1064, §3, 4; 2007 Acts, ch 44, §3; 2009 Acts, ch 41, §263

Referred to in §142C.2, 142C.4, 142C.5, 142C.18