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HUMAN RESOURCES

HOUSE FILE 99
BY GREIG, CATALDO, and
BURNETT

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act adopting a new uniform anatomical gift Act and providing a
2 penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 99

1 Section 1. NEW SECTION. 142C.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the
3 "Uniform Anatomical Gift Act".

4 Sec. 2. NEW SECTION. 142C.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Anatomical gift" means a donation, effective upon or
8 after the death of the donor, of all or part of the human body
9 of the donor.

10 2. "Bank or storage organization" means a person licensed,
11 accredited, certified, registered, or approved under the laws
12 of any state for the procurement, removal, preservation,
13 storage, or distribution of human bodies or parts.

14 3. "Decedent" means a deceased individual and includes a
15 stillborn infant or fetus.

16 4. "Document of gift" means a card signed by an individual
17 donor, a donor's will, or any other written document used by a
18 donor to make an anatomical gift.

19 5. "Donor" means an individual who makes an anatomical
20 gift.

21 6. "Enucleator" means an individual who is certified by
22 the department of ophthalmology, college of medicine,
23 university of Iowa, or by the eye bank association of America
24 to remove or process eyes or parts of eyes.

25 7. "Hospital" means a hospital licensed under chapter
26 135B, a hospital licensed, accredited, or approved under
27 federal law or the laws of any other state, and includes a
28 hospital operated by the federal government, a state, or a
29 political subdivision of a state, although not required to be
30 licensed under state laws.

31 8. "Medical examiner" means an individual who is appointed
32 as medical examiner pursuant to section 331.801 or 691.5.

33 9. "Organ procurement organization" means a person
34 certified by the united network for organ sharing, and
35 designated by the Unites States secretary of health and human

1 services pursuant to 42 U.S.C. § 273 for procurement, removal,
2 preservation, and distribution of human bodies or parts.

3 10. "Part" means organs, tissues, eyes, bones, vessels,
4 whole blood, plasma, blood platelets, blood derivatives,
5 fluid, or any other portion of a human body.

6 11. "Person" means person as defined in section 4.1.

7 12. "Physician" or "surgeon" means a physician, surgeon,
8 or osteopathic physician and surgeon, licensed or otherwise
9 authorized to practice medicine and surgery or osteopathy and
10 surgery under the laws of any state.

11 13. "State" means any state, district, commonwealth,
12 territory, or insular possession of the United States, the
13 District of Columbia, or the Commonwealth of Puerto Rico.

14 14. "Technician" means an individual who is licensed,
15 certified, or approved by an organ procurement organization or
16 who is certified, or approved by a bank or storage
17 organization to procure, remove, process, preserve, store, or
18 distribute a part.

19 Sec. 3. NEW SECTION. 142C.3 DONATION OF ANATOMICAL GIFTS
20 -- PERSONS WHO MAY EXECUTE -- MANNER OF EXECUTING.

21 1. A competent individual who is at least eighteen years
22 of age, or a minor fourteen through seventeen years of age
23 with written consent of a parent or legal guardian, may make
24 an anatomical gift for any of the purposes stated in section
25 142C.6 or may refuse to make an anatomical gift, the gift to
26 take effect upon the death of the donor.

27 2. An anatomical gift may be made only by completion of a
28 document of gift or as otherwise provided in section 142C.3.
29 If the prospective donor is a minor fourteen through seventeen
30 years of age, to be valid, a document of gift shall be signed
31 by the minor and the minor's parent or legal guardian. If the
32 donor is unable to sign the document, the document of gift
33 shall be signed by another individual and by two witnesses,
34 all of whom sign at the direction and in the presence of the
35 donor, the other individual, and the two witnesses. The

1 document of gift shall provide certification that the document
2 has been executed in the prescribed manner.

3 3. If a donor indicates the wish to become a donor,
4 pursuant to section 321.189, and the indication is attached to
5 or imprinted or noted on an individual's driver's license, the
6 document shall be considered an expression of intent for the
7 purposes of this section.

8 4. A document of gift may designate a particular
9 physician, technician, or enucleator to perform the
10 appropriate procedures. In the absence of a designation or if
11 the designee is not available to perform the procedures, the
12 donee or other person authorized to accept the anatomical gift
13 may employ or authorize any physician, technician, or
14 enucleator to perform the appropriate procedures.

15 5. A document of gift by will takes effect upon the death
16 of the testator, whether or not the will is probated. For the
17 purposes of a document of gift by will, invalidation of the
18 will for testamentary purposes does not result in the
19 invalidation of the document of gift.

20 6. A donor may amend or revoke a document of gift by any
21 of the following means:

22 a. A signed statement, executed by the donor.

23 b. An oral statement made by the donor in the presence of
24 two individuals.

25 c. Any form of communication during a terminal illness or
26 injury addressed to a health care professional, licensed or
27 certified pursuant to chapter 148, 148C, 150A, or 152.

28 d. The delivery of a written statement, signed by the
29 donor, to a specified donee to whom a document of gift has
30 been delivered.

31 7. The donor of an anatomical gift made by will may amend
32 or revoke the gift as provided in subsection 6 or in the
33 manner provided for amendment or revocation of wills.

34 8. A document of gift that is not revoked by the donor
35 prior to the donor's death is irrevocable and does not require

1 the consent or concurrence of any other person after the
2 donor's death.

3 9. An individual may refuse to make an anatomical gift of
4 the individual's body or part by completing any written
5 document expressing the individual's refusal to make an
6 anatomical gift. During a terminal illness or injury, the
7 refusal may be by an oral statement or other form of unwritten
8 communication addressed to a health care professional licensed
9 or certified under chapter 148, 148C, 150A, or 152.

10 10. In the absence of a contrary indication by the donor,
11 an anatomical gift of a part does not constitute a refusal to
12 donate other parts nor does it constitute a limitation on an
13 anatomical gift made pursuant to section 142C.4 or a removal
14 or release of other parts pursuant to section 142C.5.

15 11. In the absence of a contrary indication by the donor,
16 a revocation or amendment of an anatomical gift does not
17 constitute a refusal to make a subsequent anatomical gift. If
18 the donor intends a revocation to constitute a refusal to make
19 an anatomical gift, the donor shall make the refusal pursuant
20 to subsection 9.

21 12. A document of gift executed pursuant to this chapter
22 may be in the following or in a similar form:

23 UNIFORM DONOR CARD

24 I, _____, have made a commitment
25 to be an anatomical gift donor.

26 I wish to donate the following:

27 ___ Any needed part ___ Only the following part
28 _____

29 Donor Signature _____ Date _____

30 Sec. 4. NEW SECTION. 142C.4 DONATION OF ANATOMICAL GIFTS
31 BY INDIVIDUALS OTHER THAN THE DONOR.

32 1. A member of any of the following classes of persons, in
33 the order of priority listed, may make an anatomical gift of a
34 decedent's body or parts for an authorized purpose, unless the
35 decedent, at the time of death, has made an unrevoked refusal

1 to make an anatomical gift:

2 a. The attorney in fact pursuant to a durable power of
3 attorney for health care.

4 b. The spouse of the decedent.

5 c. An adult child of the decedent.

6 d. A parent of the decedent.

7 e. An adult sibling of the decedent.

8 f. A grandparent of the decedent.

9 g. A guardian of the decedent at the time of the
10 decedent's death.

11 2. An anatomical gift shall not be made by a person listed
12 in subsection 1 if any of the following conditions apply:

13 a. A person in a prior class is available at the time of
14 the death of the decedent to make an anatomical gift.

15 b. The person proposing to make an anatomical gift knows
16 of a refusal by the decedent to make an anatomical gift.

17 c. The person proposing to make an anatomical gift knows
18 of an objection to making an anatomical gift by a member of
19 the person's class or a prior class.

20 3. An anatomical gift by a person authorized under
21 subsection 1 shall be made by execution of a document of gift
22 signed by the person or by the person's telegraphic, recorded
23 telephonic, or other recorded message, or by any other form of
24 communication from the person that is contemporaneously
25 reduced to writing and signed by the recipient of the
26 communication.

27 4. An anatomical gift by a person authorized under
28 subsection 1 may be revoked by any member of the same or prior
29 class if, prior to the performance of removal procedures of a
30 part from the body of the decedent, the physician, technician,
31 or enucleator performing the removal procedures is notified of
32 the revocation.

33 5. Failure to make an anatomical gift under subsection 1
34 does not constitute an objection to the making of an
35 anatomical gift.

1 Sec. 5. NEW SECTION. 142C.5 AUTHORIZATION BY MEDICAL
2 EXAMINER.

3 1. The medical examiner may release and permit the removal
4 of a part from a body within the medical examiner's custody,
5 for any purpose listed in section 142C.6 when the body of the
6 deceased cannot be identified or the next of kin cannot be
7 located, and if all of the following conditions are met:

8 a. The medical examiner has received a request for the
9 part from a hospital, physician, organ procurement
10 organization, or bank or storage organization.

11 b. Considering the useful life of the part, the medical
12 examiner is satisfied that a reasonable effort has been made
13 by the organ procurement organization or bank or storage
14 organization to locate and examine the decedent's medical
15 records and inform a person listed in section 142C.4 of the
16 option to make or object to making an anatomical gift.

17 c. The medical examiner does not know of a refusal or
18 contrary indication by the decedent or of an objection by a
19 person having priority to act listed in section 142C.4.

20 d. Removal of a part will be performed by a physician,
21 technician, or enucleator.

22 e. Removal of a part will not significantly alter or
23 compromise the results of any autopsy or investigation.

24 f. Removal of a part will be in accordance with accepted
25 medical standards.

26 g. Cosmetic restoration will be performed, if appropriate.

27 2. The medical examiner releasing and permitting the
28 removal of a part shall maintain a permanent record of the
29 name of the decedent, the date, time, and person to whom the
30 body was released, and the parts which were removed.

31 Sec. 6. NEW SECTION. 142C.6 REQUIREMENTS -- ACCEPTABLE
32 DONEES AND PURPOSES FOR WHICH ANATOMICAL GIFTS MAY BE MADE.

33 1. The following persons may be donees of anatomical gifts
34 for the purposes stated:

35 a. A hospital, physician, organ procurement organization,

1 or bank or storage organization for transplantation, therapy,
2 medical or dental education, research, or advancement of
3 medical or dental science.

4 b. An accredited medical or dental school, college, or
5 university for education, research, or the advancement of
6 medical or dental science.

7 c. A designated individual for transplantation or therapy
8 needed by the individual.

9 2. An anatomical gift may be made to a designated donee or
10 without designating a donee. If a donee is not designated or
11 if the donee is not available or rejects the anatomical gift,
12 the anatomical gift may be accepted by any person listed in
13 subsection 1.

14 3. If the donee knows of the decedent's refusal or
15 contrary indications to make an anatomical gift or that an
16 anatomical gift by a member of a class having priority to act
17 is opposed by a member of the same class or a prior class
18 listed in section 142C.4, the donee shall not accept the
19 anatomical gift.

20 Sec. 7. NEW SECTION. 142C.7 DELIVERY OF DOCUMENT OF
21 GIFT.

22 1. Validity of an anatomical gift does not require
23 delivery of the document of gift during the donor's lifetime.

24 2. If an anatomical gift is made to a designated donee,
25 the document of gift, or a copy, may be delivered to the donee
26 to expedite the appropriate procedures after the death of the
27 donor. The document of gift, or a copy, may be deposited in
28 any hospital, organ procurement organization, bank or storage
29 organization, or registry office that accepts the document of
30 gift for safekeeping or for the facilitation of procedures
31 after the death of the donor. If a document is deposited by a
32 donor in a hospital or bank or storage organization, the
33 hospital or bank or storage organization may forward the
34 document to an organ procurement organization that will retain
35 the document for facilitating procedures following the death

1 of the donor. Upon request of a hospital, physician, or
2 surgeon, upon or after the donor's death, the person in
3 possession of the document of gift shall allow the hospital,
4 physician, or surgeon to examine or copy the document of gift.

5 Sec. 8. NEW SECTION. 142C.8 CONFIDENTIAL INFORMATION.

6 A hospital, licensed or certified health care professional,
7 pursuant to chapter 148, 148C, 150A, or 152, or medical
8 examiner may release patient information to an organ
9 procurement organization, or bank or storage organization only
10 as a referral for evaluation of the patient as a donor. Any
11 information regarding a patient, including the patient's
12 identity, however, constitutes confidential medical
13 information and under any other circumstances is prohibited
14 from disclosure without the written consent of the patient or
15 the patient's legal representative.

16 Sec. 9. NEW SECTION. 142C.9 RIGHTS AND DUTIES AT DEATH.

17 1. The rights of a donee created by an anatomical gift are
18 superior to the rights of any other person except with respect
19 to autopsies pursuant to section 142C.12.

20 2. A donee may accept or reject an anatomical gift of an
21 entire body or part. If the donee accepts the entire body as
22 a gift, the donee, subject to the terms of the gift, may allow
23 embalming and use of the body in funeral services. If the
24 gift is a part of a body, the donee, upon the death of the
25 donor and prior to embalming, shall cause the part to be
26 removed with minimal alteration to body appearance. Following
27 removal of the part, custody of the remainder of the body
28 vests in the person under obligation to dispose of the body.

29 3. The time of death shall be determined by a physician
30 who attends the donor at death, or, if no attending physician
31 is present, the physician who certifies the death. The
32 physician who attends the donor at death and the physician who
33 certifies the time of death shall not participate in the
34 procedures for removing or transplanting a part of the
35 decedent. A medical examiner acting to determine the time of

1 death or to certify the death, however, may remove a part in
2 accordance with this chapter.

3 4. If an anatomical gift is made, a physician or
4 technician may remove any donated parts and an enucleator may
5 remove any donated eyes or parts of eyes, after determination
6 of death by a physician.

7 5. A donee may presume that a claimant of gift is valid
8 absent actual knowledge to the contrary.

9 Sec. 10. NEW SECTION. 142C.10 COORDINATION OF
10 PROCUREMENT USE.

11 Each hospital in the state shall establish agreements or
12 affiliations for coordination of procurement and use of human
13 parts with an organ procurement organization for any purpose
14 stated in section 142C.6.

15 Sec. 11. NEW SECTION. 142C.11 SALE OR PURCHASE OF PARTS
16 PROHIBITED.

17 1. A person shall not knowingly, for valuable
18 consideration, purchase or sell a part for transplantation or
19 therapy, if removal of the part is intended to occur after the
20 death of the decedent.

21 2. Valuable consideration does not include reasonable
22 payment for the removal, processing, disposal, preservation,
23 quality control, storage, distribution, transportation, or
24 implantation of a part.

25 3. A person who violates this section is guilty of a class
26 "C" felony and is subject to imprisonment not to exceed ten
27 years and notwithstanding section 902.9, to a fine not to
28 exceed two hundred fifty thousand dollars, or both.

29 Sec. 12. NEW SECTION. 142C.12 EXAMINATION, AUTOPSY,
30 LIABILITY.

31 1. An anatomical gift is subject to reasonable
32 examination, including but not limited to an autopsy, human
33 immunodeficiency virus testing, and testing for communicable
34 disease, which is necessary to ensure medical acceptability of
35 the gift for the purposes intended.

1 2. Anatomical gifts made pursuant to this chapter are
2 subject to the laws governing autopsies.

3 3. A hospital, health care professional licensed or
4 certified pursuant to chapter 148, 148C, 150A, or 152, a
5 medical examiner, technician, enucleator, or other person, who
6 complies with this chapter in good faith or with the
7 applicable anatomical gift law of another state, or who
8 attempts in good faith to comply, is immune from any
9 liability, civil or criminal, which might result from the
10 making or acceptance of an anatomical gift.

11 4. An individual who makes an anatomical gift pursuant to
12 section 142C.3 or 142C.4 and the individual's estate are not
13 liable for any injury or damages that may result from the
14 making or the use of the anatomical gift, if the gift is made
15 in good faith.

16 Sec. 13. NEW SECTION. 142C.13 SERVICE BUT NOT A SALE.

17 The procurement, removal, preservation, processing,
18 storage, distribution, or use of parts for the purpose of
19 injecting, transfusing, or transplanting any of the parts into
20 the human body is, for all purposes, the rendition of a
21 service by every person participating in the act, and whether
22 or not any remuneration is paid, is not a sale of the part for
23 any purposes. However, any person that renders such service
24 warrants only under this section that due care has been
25 exercised and that acceptable professional standards of care
26 in providing such service according to the state of the
27 medical arts have been followed. Strict liability, in tort,
28 shall not be applicable to the rendition of such services.

29 Sec. 14. NEW SECTION. 142C.14 TRANSITIONAL PROVISIONS.

30 This chapter applies to a document of gift, revocation, or
31 refusal to make an anatomical gift signed by the donor or a
32 person authorized to make or object to the making of an
33 anatomical gift on or after July 1, 1995.

34 Sec. 15. NEW SECTION. 142C.15 UNIFORMITY OF APPLICATION
35 AND CONSTRUCTION.

1 This chapter shall be applied and construed to effectuate
2 the general purpose to make uniform the law with respect to
3 anatomical gifts among states which enact this law.

4 Sec. 16. REPEAL. Chapter 142A, Code 1995, is repealed.

5 EXPLANATION

6 This bill replaces the current uniform anatomical gift Act
7 (chapter 142A) with a new uniform anatomical gift Act (chapter
8 142C). The new Act differs from the former Act in the
9 following areas:

10 The new Act provides a definition of "anatomical gift",
11 expands the definition of "bank or storage facility"
12 (organization), and defines "document of gift", "enucleator",
13 "medical examiner", "organ procurement organization", and
14 "technician". Other existing definitions are retained or
15 amended only nonsubstantively.

16 The new Act provides that in addition to competent persons
17 18 years of age or older, a person 14 through 17 years of age
18 may make an anatomical gift if the person and the person's
19 parent or legal guardian sign the document of gift. The new
20 Act also provides that an indication of donation on a donor's
21 individual motor vehicle driver's license is an expression of
22 intent to make an anatomical gift. The new Act also
23 eliminates the requirement that the document of gift, if other
24 than a will, be signed in the presence of two witnesses who
25 also must sign the document in the presence of the donor.

26 In the area of revocation of an anatomical gift, the new
27 Act eliminates the required delivery or communication of a
28 signed or oral statement to a donee, and eliminates the
29 provision of destruction, cancellation, or mutilation of the
30 document and all executed copies of the document as a means of
31 revocation. The new Act also provides means for a donor to
32 refuse to make an anatomical gift, and provides that if a
33 donor makes a gift of a part, this does not limit the donation
34 of other parts by the donor, nor does the revocation of a gift
35 preclude subsequent donations. The Act also provides an

1 example of a uniform donor card form.

2 The new Act amends the listing of individuals other than
3 the donor who may make an anatomical gift of the decedent's
4 body by adding grandparents of the decedent to the list and by
5 eliminating the category of any other person obligated to
6 dispose of the body. The new Act also provides that the right
7 of an attorney in fact under a durable power of attorney for
8 medical care supersedes all others listed as to donation of
9 the decedent's body or parts.

10 The new Act provides for the making of an anatomical gift
11 of a body in the custody of the medical examiner if the body
12 cannot be identified or the next of kin cannot be located
13 under certain circumstances.

14 The new Act provides for the coordination of procurement
15 use between hospitals and organ procurement organizations
16 throughout the state. The new Act also specifies what is not
17 considered valuable consideration in regard to sale or
18 purchase of parts and establishes sale or purchase of parts as
19 a class "C" felony with an increased fine. The new Act
20 specifies the types of examinations of an anatomical gift
21 which may be performed to ensure medical acceptability of the
22 gift and provides additional immunity for donors and their
23 estates for good faith donations.

24 The Act also provides for transition from the current Act
25 to the new Act beginning July 1, 1995, and provides for repeal
26 of the current Act.

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