

# Senate Study Bill 52

## Conference Committee Text

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1 1 Section 1. NEW SECTION. 142C.1 SHORT TITLE.  
1 2 This chapter shall be known and may be cited as the  
1 3 "Uniform Anatomical Gift Act".  
1 4 Sec. 2. NEW SECTION. 142C.2 DEFINITIONS.  
1 5 As used in this chapter, unless the context otherwise  
1 6 requires:  
1 7 1. "Anatomical gift" means a donation, effective upon or  
1 8 after the death of the donor, of all or part of the human body  
1 9 of the donor.  
1 10 2. "Bank or storage organization" means a person licensed,  
1 11 accredited, certified, registered, or approved under the laws  
1 12 of any state for the procurement, removal, preservation,  
1 13 storage, or distribution of human bodies or parts.  
1 14 3. "Decedent" means a deceased individual and includes a  
1 15 stillborn infant or fetus.  
1 16 4. "Document of gift" means a card signed by an individual  
1 17 donor, a donor's will, or any other written document used by a  
1 18 donor to make an anatomical gift.  
1 19 5. "Donor" means an individual who makes an anatomical  
1 20 gift.  
1 21 6. "Enucleator" means an individual who is certified by  
1 22 the department of ophthalmology, college of medicine,  
1 23 university of Iowa, or by the eye bank association of America  
1 24 to remove or process eyes or parts of eyes.  
1 25 7. "Hospital" means a hospital licensed under chapter  
1 26 135B, a hospital licensed, accredited, or approved under  
1 27 federal law or the laws of any other state, and includes a  
1 28 hospital operated by the federal government, a state, or a  
1 29 political subdivision of a state, although not required to be  
1 30 licensed under state laws.  
1 31 8. "Medical examiner" means an individual who is appointed  
1 32 as medical examiner pursuant to section 331.801 or 691.5.  
1 33 9. "Organ procurement organization" means a person  
1 34 certified by the united network for organ sharing, and  
1 35 designated by the Unites States secretary of health and human  
2 1 services pursuant to 42 U.S.C. } 273 for procurement, removal,  
2 2 preservation, and distribution of human bodies or parts.  
2 3 10. "Part" means organs, tissues, eyes, bones, vessels,  
2 4 whole blood, plasma, blood platelets, blood derivatives,  
2 5 fluid, or any other portion of a human body.  
2 6 11. "Person" means person as defined in section 4.1.  
2 7 12. "Physician" or "surgeon" means a physician, surgeon,  
2 8 or osteopathic physician and surgeon, licensed or otherwise  
2 9 authorized to practice medicine and surgery or osteopathy and  
2 10 surgery under the laws of any state.  
2 11 13. "State" means any state, district, commonwealth,  
2 12 territory, or insular possession of the United States, the  
2 13 District of Columbia, or the Commonwealth of Puerto Rico.  
2 14 14. "Technician" means an individual who is licensed,  
2 15 certified, or approved by an organ procurement organization or  
2 16 who is certified, or approved by a bank or storage  
2 17 organization to procure, remove, process, preserve, store, or  
2 18 distribute a part.  
2 19 Sec. 3. NEW SECTION. 142C.3 DONATION OF ANATOMICAL GIFTS  
2 20 &endash; PERSONS WHO MAY EXECUTE &endash; MANNER OF EXECUTING.  
2 21 1. A competent individual who is at least eighteen years

2 22 of age, or a minor fourteen through seventeen years of age  
2 23 with written consent of a parent or legal guardian, may make  
2 24 an anatomical gift for any of the purposes stated in section  
2 25 142C.6 or may refuse to make an anatomical gift, the gift to  
2 26 take effect upon the death of the donor.

2 27 2. An anatomical gift may be made only by completion of a  
2 28 document of gift or as otherwise provided in section 142C.3.  
2 29 If the prospective donor is a minor fourteen through seventeen  
2 30 years of age, to be valid, a document of gift shall be signed  
2 31 by the minor and the minor's parent or legal guardian. If the  
2 32 donor is unable to sign the document, the document of gift  
2 33 shall be signed by another individual and by two witnesses,  
2 34 all of whom sign at the direction and in the presence of the  
2 35 donor, the other individual, and the two witnesses. The  
3 1 document of gift shall provide certification that the document  
3 2 has been executed in the prescribed manner.

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

3 8 4. A document of gift may designate a particular  
3 9 physician, technician, or enucleator to perform the  
3 10 appropriate procedures. In the absence of a designation or if  
3 11 the designee is not available to perform the procedures, the  
3 12 donee or other person authorized to accept the anatomical gift  
3 13 may employ or authorize any physician, technician, or  
3 14 enucleator to perform the appropriate procedures.

3 15 5. A document of gift by will takes effect upon the death  
3 16 of the testator, whether or not the will is probated. For the  
3 17 purposes of a document of gift by will, invalidation of the  
3 18 will for testamentary purposes does not result in the  
3 19 invalidation of the document of gift.

3 20 6. A donor may amend or revoke a document of gift by any  
3 21 of the following means:

3 22 a. A signed statement, executed by the donor.

3 23 b. An oral statement made by the donor in the presence of  
3 24 two individuals.

3 25 c. Any form of communication during a terminal illness or  
3 26 injury addressed to a health care professional, licensed or  
3 27 certified pursuant to chapter 148, 148C, 150A, or 152.

3 28 d. The delivery of a written statement, signed by the  
3 29 donor, to a specified donee to whom a document of gift has  
3 30 been delivered.

3 31 7. The donor of an anatomical gift made by will may amend  
3 32 or revoke the gift as provided in subsection 6 or in the  
3 33 manner provided for amendment or revocation of wills.

3 34 8. A document of gift that is not revoked by the donor  
3 35 prior to the donor's death is irrevocable and does not require  
4 1 the consent or concurrence of any other person after the  
4 2 donor's death.

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

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

4 15 11. In the absence of a contrary indication by the donor,  
4 16 a revocation or amendment of an anatomical gift does not  
4 17 constitute a refusal to make a subsequent anatomical gift. If  
4 18 the donor intends a revocation to constitute a refusal to make

4 19 an anatomical gift, the donor shall make the refusal pursuant  
4 20 to subsection 9.

4 21 12. A document of gift executed pursuant to this chapter  
4 22 may be in the following or in a similar form:

4 23 UNIFORM DONOR CARD

4 24 I, \_\_\_\_\_, have made a commitment  
4 25 to be an anatomical gift donor.

4 26 I wish to donate the following:

4 27 \_\_\_\_\_ Any needed part \_\_\_\_\_ Only the following part

4 28 \_\_\_\_\_  
4 29 Donor Signature \_\_\_\_\_ Date \_\_\_\_\_

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

4 32 1. A member of any of the following classes of persons, in  
4 33 the order of priority listed, may make an anatomical gift of a  
4 34 decedent's body or parts for an authorized purpose, unless the  
4 35 decedent, at the time of death, has made an unrevoked refusal  
5 1 to make an anatomical gift:

5 2 a. The attorney in fact pursuant to a durable power of  
5 3 attorney for health care.

5 4 b. The spouse of the decedent.

5 5 c. An adult child of the decedent.

5 6 d. A parent of the decedent.

5 7 e. An adult sibling of the decedent.

5 8 f. A grandparent of the decedent.

5 9 g. A guardian of the decedent at the time of the  
5 10 decedent's death.

5 11 2. An anatomical gift shall not be made by a person listed  
5 12 in subsection 1 if any of the following conditions apply:

5 13 a. A person in a prior class is available at the time of  
5 14 the death of the decedent to make an anatomical gift.

5 15 b. The person proposing to make an anatomical gift knows  
5 16 of a refusal by the decedent to make an anatomical gift.

5 17 c. The person proposing to make an anatomical gift knows  
5 18 of an objection to making an anatomical gift by a member of  
5 19 the person's class or a prior class.

5 20 3. An anatomical gift by a person authorized under  
5 21 subsection 1 shall be made by execution of a document of gift  
5 22 signed by the person or by the person's telegraphic, recorded  
5 23 telephonic, or other recorded message, or by any other form of  
5 24 communication from the person that is contemporaneously  
5 25 reduced to writing and signed by the recipient of the  
5 26 communication.

5 27 4. An anatomical gift by a person authorized under  
5 28 subsection 1 may be revoked by any member of the same or prior  
5 29 class if, prior to the performance of removal procedures of a  
5 30 part from the body of the decedent, the physician, technician,  
5 31 or enucleator performing the removal procedures is notified of  
5 32 the revocation.

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

6 1 Sec. 5. NEW SECTION. 142C.5 AUTHORIZATION BY MEDICAL  
6 2 EXAMINER.

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

6 8 a. The medical examiner has received a request for the  
6 9 part from a hospital, physician, organ procurement  
6 10 organization, or bank or storage organization.

6 11 b. Considering the useful life of the part, the medical  
6 12 examiner is satisfied that a reasonable effort has been made  
6 13 by the organ procurement organization or bank or storage  
6 14 organization to locate and examine the decedent's medical  
6 15 records and inform a person listed in section 142C.4 of the

6 16 option to make or object to making an anatomical gift.  
6 17 c. The medical examiner does not know of a refusal or  
6 18 contrary indication by the decedent or of an objection by a  
6 19 person having priority to act listed in section 142C.4.  
6 20 d. Removal of a part will be performed by a physician,  
6 21 technician, or enucleator.  
6 22 e. Removal of a part will not significantly alter or  
6 23 compromise the results of any autopsy or investigation.  
6 24 f. Removal of a part will be in accordance with accepted  
6 25 medical standards.  
6 26 g. Cosmetic restoration will be performed, if appropriate.

6 27 2. The medical examiner releasing and permitting the  
6 28 removal of a part shall maintain a permanent record of the  
6 29 name of the decedent, the date, time, and person to whom the  
6 30 body was released, and the parts which were removed.

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

6 33 1. The following persons may be donees of anatomical gifts  
6 34 for the purposes stated:

6 35 a. A hospital, physician, organ procurement organization,  
7 1 or bank or storage organization for transplantation, therapy,  
7 2 medical or dental education, research, or advancement of  
7 3 medical or dental science.

7 4 b. An accredited medical or dental school, college, or  
7 5 university for education, research, or the advancement of  
7 6 medical or dental science.

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

7 9 2. An anatomical gift may be made to a designated donee or  
7 10 without designating a donee. If a donee is not designated or  
7 11 if the donee is not available or rejects the anatomical gift,  
7 12 the anatomical gift may be accepted by any person listed in  
7 13 subsection 1.

7 14 3. If the donee knows of the decedent's refusal or  
7 15 contrary indications to make an anatomical gift or that an  
7 16 anatomical gift by a member of a class having priority to act  
7 17 is opposed by a member of the same class or a prior class  
7 18 listed in section 142C.4, the donee shall not accept the  
7 19 anatomical gift.

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

7 22 1. Validity of an anatomical gift does not require  
7 23 delivery of the document of gift during the donor's lifetime.

7 24 2. If an anatomical gift is made to a designated donee,  
7 25 the document of gift, or a copy, may be delivered to the donee  
7 26 to expedite the appropriate procedures after the death of the  
7 27 donor. The document of gift, or a copy, may be deposited in  
7 28 any hospital, organ procurement organization, bank or storage  
7 29 organization, or registry office that accepts the document of  
7 30 gift for safekeeping or for the facilitation of procedures  
7 31 after the death of the donor. If a document is deposited by a  
7 32 donor in a hospital or bank or storage organization, the  
7 33 hospital or bank or storage organization may forward the  
7 34 document to an organ procurement organization that will retain  
7 35 the document for facilitating procedures following the death  
8 1 of the donor. Upon request of a hospital, physician, or  
8 2 surgeon, upon or after the donor's death, the person in  
8 3 possession of the document of gift shall allow the hospital,  
8 4 physician, or surgeon to examine or copy the document of gift.

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

8 6 A hospital, licensed or certified health care professional,  
8 7 pursuant to chapter 148, 148C, 150A, or 152, or medical  
8 8 examiner may release patient information to an organ  
8 9 procurement organization, or bank or storage organization only  
8 10 as a referral for evaluation of the patient as a donor. Any  
8 11 information regarding a patient, including the patient's  
8 12 identity, however, constitutes confidential medical

8 13 information and under any other circumstances is prohibited  
8 14 from disclosure without the written consent of the patient or  
8 15 the patient's legal representative.

8 16 Sec. 9. NEW SECTION. 142C.9 RIGHTS AND DUTIES AT DEATH.

8 17 1. The rights of a donee created by an anatomical gift are  
8 18 superior to the rights of any other person except with respect  
8 19 to autopsies pursuant to section 142C.12.

8 20 2. A donee may accept or reject an anatomical gift of an  
8 21 entire body or part. If the donee accepts the entire body as  
8 22 a gift, the donee, subject to the terms of the gift, may allow  
8 23 embalming and use of the body in funeral services. If the  
8 24 gift is a part of a body, the donee, upon the death of the  
8 25 donor and prior to embalming, shall cause the part to be  
8 26 removed with minimal alteration to body appearance. Following  
8 27 removal of the part, custody of the remainder of the body  
8 28 vests in the person under obligation to dispose of the body.

8 29 3. The time of death shall be determined by a physician  
8 30 who attends the donor at death, or, if no attending physician  
8 31 is present, the physician who certifies the death. The  
8 32 physician who attends the donor at death and the physician who  
8 33 certifies the time of death shall not participate in the  
8 34 procedures for removing or transplanting a part of the  
8 35 decedent. A medical examiner acting to determine the time of  
9 1 death or to certify the death, however, may remove a part in  
9 2 accordance with this chapter.

9 3 4. If an anatomical gift is made, a physician or  
9 4 technician may remove any donated parts and an enucleator may  
9 5 remove any donated eyes or parts of eyes, after determination  
9 6 of death by a physician.

9 7 5. A donee may presume that a claimant of gift is valid  
9 8 absent actual knowledge to the contrary.

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

9 11 Each hospital in the state shall establish agreements or  
9 12 affiliations for coordination of procurement and use of human  
9 13 parts with an organ procurement organization for any purpose  
9 14 stated in section 142C.6.

9 15 Sec. 11. NEW SECTION. 142C.11 SALE OR PURCHASE OF PARTS  
9 16 PROHIBITED.

9 17 1. A person shall not knowingly, for valuable  
9 18 consideration, purchase or sell a part for transplantation or  
9 19 therapy, if removal of the part is intended to occur after the  
9 20 death of the decedent.

9 21 2. Valuable consideration does not include reasonable  
9 22 payment for the removal, processing, disposal, preservation,  
9 23 quality control, storage, distribution, transportation, or  
9 24 implantation of a part.

9 25 3. A person who violates this section is guilty of a class  
9 26 "C" felony and is subject to imprisonment not to exceed ten  
9 27 years and notwithstanding section 902.9, to a fine not to  
9 28 exceed two hundred fifty thousand dollars, or both.

9 29 Sec. 12. NEW SECTION. 142C.12 EXAMINATION, AUTOPSY,  
9 30 LIABILITY.

9 31 1. An anatomical gift is subject to reasonable  
9 32 examination, including but not limited to an autopsy, human  
9 33 immunodeficiency virus testing, and testing for communicable  
9 34 disease, which is necessary to ensure medical acceptability of  
9 35 the gift for the purposes intended.

10 1 2. Anatomical gifts made pursuant to this chapter are  
10 2 subject to the laws governing autopsies.

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

10 10 making or acceptance of an anatomical gift.

10 11 4. An individual who makes an anatomical gift pursuant to  
10 12 section 142C.3 or 142C.4 and the individual's estate are not  
10 13 liable for any injury or damages that may result from the  
10 14 making or the use of the anatomical gift, if the gift is made  
10 15 in good faith.

10 16 Sec. 13. NEW SECTION. 142C.13 SERVICE BUT NOT A SALE.

10 17 The procurement, removal, preservation, processing,  
10 18 storage, distribution, or use of parts for the purpose of  
10 19 injecting, transfusing, or transplanting any of the parts into  
10 20 the human body is, for all purposes, the rendition of a  
10 21 service by every person participating in the act, and whether  
10 22 or not any remuneration is paid, is not a sale of the part for  
10 23 any purposes. However, any person that renders such service  
10 24 warrants only under this section that due care has been  
10 25 exercised and that acceptable professional standards of care  
10 26 in providing such service according to the state of the  
10 27 medical arts have been followed. Strict liability, in tort,  
10 28 shall not be applicable to the rendition of such services.

10 29 Sec. 14. NEW SECTION. 142C.14 TRANSITIONAL PROVISIONS.

10 30 This chapter applies to a document of gift, revocation, or  
10 31 refusal to make an anatomical gift signed by the donor or a  
10 32 person authorized to make or object to the making of an  
10 33 anatomical gift on or after July 1, 1995.

10 34 Sec. 15. NEW SECTION. 142C.15 UNIFORMITY OF APPLICATION  
10 35 AND CONSTRUCTION.

11 1 This chapter shall be applied and construed to effectuate  
11 2 the general purpose to make uniform the law with respect to  
11 3 anatomical gifts among states which enact this law.

11 4 Sec. 16. REPEAL. Chapter 142A, Code 1995, is repealed.

11 5 EXPLANATION

11 6 This bill replaces the current uniform anatomical gift Act  
11 7 (chapter 142A) with a new uniform anatomical gift Act (chapter  
11 8 142C). The new Act differs from the former Act in the  
11 9 following areas:

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

11 16 The new Act provides that in addition to competent persons  
11 17 18 years of age or older, a person 14 through 17 years of age  
11 18 may make an anatomical gift if the person and the person's  
11 19 parent or legal guardian sign the document of gift. The new  
11 20 Act also provides that an indication of donation on a donor's  
11 21 individual motor vehicle driver's license is an expression of  
11 22 intent to make an anatomical gift. The new Act also  
11 23 eliminates the requirement that the document of gift, if other  
11 24 than a will, be signed in the presence of two witnesses who  
11 25 also must sign the document in the presence of the donor.

11 26 In the area of revocation of an anatomical gift, the new  
11 27 Act eliminates the required delivery or communication of a  
11 28 signed or oral statement to a donee, and eliminates the  
11 29 provision of destruction, cancellation, or mutilation of the  
11 30 document and all executed copies of the document as a means of  
11 31 revocation. The new Act also provides means for a donor to  
11 32 refuse to make an anatomical gift, and provides that if a  
11 33 donor makes a gift of a part, this does not limit the donation  
11 34 of other parts by the donor, nor does the revocation of a gift  
11 35 preclude subsequent donations. The Act also provides an  
12 1 example of a uniform donor card form.

12 2 The new Act amends the listing of individuals other than  
12 3 the donor who may make an anatomical gift of the decedent's  
12 4 body by adding grandparents of the decedent to the list and by  
12 5 eliminating the category of any other person obligated to  
12 6 dispose of the body. The new Act also provides that the right

12 7 of an attorney in fact under a durable power of attorney for  
12 8 medical care supersedes all others listed as to donation of  
12 9 the decedent's body or parts.

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

12 14 The new Act provides for the coordination of procurement  
12 15 use between hospitals and organ procurement organizations  
12 16 throughout the state. The new Act also specifies what is not  
12 17 considered valuable consideration in regard to sale or  
12 18 purchase of parts and establishes sale or purchase of parts as  
12 19 a class "C" felony with an increased fine. The new Act  
12 20 specifies the types of examinations of an anatomical gift  
12 21 which may be performed to ensure medical acceptability of the  
12 22 gift and provides additional immunity for donors and their  
12 23 estates for good faith donations.

12 24 The Act also provides for transition from the current Act  
12 25 to the new Act beginning July 1, 1995, and provides for repeal  
12 26 of the current Act.

12 27 LSB 1268XC 76

12 28 pf/sc/14