

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB1036

Hearing Date: Wednesday February 10, 2010
Committee On: Health and Human Services
Introducer: Council
One Liner: Adopt the Revised Uniform Anatomical Gift Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Campbell, Gay, Gloor, Howard, Pankonin, Stuthman, Wallman
Nay:
Absent:
Present Not Voting:

Proponents:
Senator Council
Thomas Quinn
Kyle Herber
Carlyle Ring

Milton Bemis
Janet Bemis
Larry Ruth

Opponents:
Don Wesely

Neutral:
Jim Cunningham

Representing:
Introducer
State of Nebraska Anatomical Board
Nebraska Organ Recovery System
National Conference of Commissioners on Uniform
State Laws
Self
Self
Uniform Law Commission

Representing:
NATA

Representing:
Nebraska Catholic Conference

Summary of purpose and/or changes:
LB 1036 (Council) adopts the Revised Uniform Anatomical Gift Act

Section 1 cites the act.

Section 2 defines terms in the act.

Section 3 states the act applies to an anatomical gift, or amendment to, revocation of or refusal to make an anatomical gift.

Section 4 identifies who may make an anatomical gift.

The gift may be made (subject to Section 5 and 8 of the act) by:

(1) The donor if an adult; or if the donor is a minor is emancipated, or authorized under state law to apply for a driver's license because the donor is at least thirteen year of age.

(2) An agent of the donor (unless the power of attorney for health care or other record prohibits the agent from making

an anatomical gift);

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

(4) A donor's guardian.

Section 5 Identifies the manner in which an anatomical gift may be made.

(1) By the donor authorizing a statement or symbol indicating 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 communicated to at least two adults, one whom is a disinterested witness (as defined in the act).

Section 6 amend or revoke an anatomical gift (subject to section 8 of the act) by:

(1) A record signed by the donor, the other person (identified in section 4); or another individual acting at the direction of the donor, or the other person, if the donor, or other person, is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

A record unable to be physically signed by a donor, or other person, must be witnessed by a least two adults, at least one of whom is a disinterested witness, and be signed at the request of the donor, or other person, and state that it has been signed accordingly.

Section 7 refusing to make an anatomical gift by:

(1) A record signed by the individual or another individual acting at the direction of the individual if the individual is physically unable to sign;

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

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to two adults, at least one of whom is a disinterested witness.

Section 8 revocation and non-revocation of an anatomical gift

In the absence of an express, contrary indication by the donor a person other than the donor is barred from making, amending or revoking an anatomical gift of a donor's part if the gift is made in accordance to the act (except as provided by section 8 that allows parents to revoke the refusal of an unemancipated minor after death of the minor).

If an unemancipated minor dies a parent may revoke or amend an anatomical gift by the minor; or revoke a minor's refusal of an anatomical gift

Section 9 purposes of an anatomical gift

An anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research or education may be made by any member of the following classes of person who is reasonably available, in the order of priority listed.

(1) An agent of the decedent at the time of death who could have made an anatomical gift immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) Person acting as the guardian of the person decedent; and

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

Section 10 process for an anatomical gift and revocation by class members

Person authorized to make an anatomical gift under section 9 may make an anatomical gift by a signed document or by an oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

An anatomical gift by a person authorized under section 9 may be amended or revoked orally or in a record by any member of a prior class. If more than one member of the prior class is reasonably available the gift made by a person authorized under section 9 of this act may be:

- (1) Amended only if a majority of the reasonably available members agree to amend the gift; or
- (2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

A revocation from above is effective only if, before an incision has been made to remove part from the donor body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital or physician or technician knows of the revocation.

Section 11 the recipients of an anatomical gift

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

- (1) A hospital; an accredited medical school, dental school, college or university; an organ procurement organization or any other appropriate person, for research or education;
- (2) An individual designated by the person making the anatomical gift, if the individual is the recipient of the part (unless the part cannot be transplanted into the individual then, absence of an express, contrary indication by the person making the anatomical gift, the part passes as per outlined in the act); or
- (3) An eye bank or tissue bank.

If there is more than one purpose of an anatomical gift identified in the document, not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

Section 12 search for documentation

A law enforcement officer, firefighter, paramedic or other emergency rescuer finding the individual; and a hospital, (as soon as practical after arrival) shall make a reasonable search of an individual who is reasonably believed to be dead, or near death, for a document of gift or other information identifying the individual as a donor. If found by emergency responders the document will be sent to the hospital. A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

Section 13 utilization of document of gift

A document of gift need not be delivered during the donor's lifetime to be effective. Upon, or after, an individual's death a person in possession of a document of gift or refusal shall allow for examination and copying of the document.

Section 14 examination of registry and medical suitability of anatomical gift

When a hospital refers an individual, at or near death, to a procurement organization the organization shall make a reasonable search of the records of the Donor Registry of Nebraska and the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift. A procurement organization must be allowed reasonable access to information in the donor registry to ascertain whether an individual at or near death is a donor. Additionally the organization may conduct any reasonable examination, prior to and after the donor's death, (including an examination of all medical and dental records) necessary to determine the medical suitability of the part. Measures necessary to ensure the medical suitability of the part from a prospective donor may be administered unless it would not provide the donor with appropriate end-of-life care or cause the donor's death other than by the prospective donor's underlying pathology.

Upon the death of a minor who was a donor or has a signed refusal, unless the procurement organization knows the minor is emancipated, a reasonable search of the parents will occur to provide them the opportunity to revoke or amend the anatomical gift or revoke the refusal.

Neither the physician who attends the decedent at death nor who determines time of death may participate in the procedures for removing or transplanting a part from the decedent. A physician or technician may remove a donated part as qualified to remove.

Section 15 hospitals required to coordinate with procurement organizations

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

Section 16 and 17 Criminal penalties

Section 16

A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part. A person that for valuable consideration knowingly purchases or sells a part for transplantation or therapy commits a Class IIIA felony.

Section 17 A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, and amendment or revocation of a document of gift, or a refusal commits a Class IIIA felony.

Section 18 Liability

A person acting in accordance, or with good faith, with the act, or applicable anatomical gift laws of another state, is not liable in a civil action, criminal prosecution, or administrative proceeding. Neither the person, nor the donor's estate, is liable for any injury or damages resulting from making or using the gift. A person determining whether an anatomical gift has been made, amended or revoked may rely upon representations of an individual regarding the individual's relationship to the donor, unless the person knows that the representation is untrue.

Section 19 Document of gift validity

A document of gift is valid if executed in accordance with the act; the laws of the state or country where it was executed; or the laws of the state or country where the person making the gift resides or was a national at the time the document of gift was executed. A person may presume a document of gift is valid unless that person knows that it was not validly executed or was revoked.

Section 20 Advance health care directives and anatomical gift conflict resolution

Defines advance health care directive, declaration and health care decision under the act. If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration measures necessary to ensure the medical suitability of a part for transplantation or therapy the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. The conflict is to be resolved expeditiously. The section outlines the substitute representatives if the donor is not available. If the conflict is not resolved expeditiously, the direction of the declaration or advanced directive controls.

Qualification for eye enucleation

LB 1036 states that an appropriately qualified designee of a physician with training in ophthalmologic techniques or a funeral director and embalmer licensed pursuant to the Funeral Directing and Embalming Practice Act upon successfully completing a course in eye enucleation and receiving a certificate of competence from the Department of Ophthalmology of the University of Nebraska Medical Center may enucleate the eyes of the donor.

Reconciliation of language in bill with current law

LB 1036 adds "Revised" to the Uniform Anatomical Gift Act. Changes the federally designated organ procurement organization "in" Nebraska to "for" Nebraska.

Explanation of amendments:

AM 1839 changes the allowable age for a minor to donate an organ from thirteen, under the bill, to sixteen years of age.

LB 1036 states the ninth priority class of person allowed to gift a decedent's body or organ is an adult who exhibits special care and concern for the decedent. The amendment adds "other than any medical personnel caring for the decedent at the time or immediately leading up the decedent's death" to that priority class.

The amendment adds the State Anatomical Board as an organization that may receive a gift of a body for the purpose of

research or education under the act.

Under the bill's definition for advance health care directive the amendment inserts the cites for Nebraska statutes 30-3401 to 30-3432, for health care delegation of decision making authority to a designated attorney in fact.

Under the definition for declaration specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor the amendment changes life support system to life support treatment.

Tim Gay, Chairperson