

AN ACT

RELATING TO ANATOMICAL GIFTS; PROVIDING POWERS AND DUTIES;  
CLARIFYING DUTIES AND PROCEDURES UNDER THE UNIFORM  
ANATOMICAL GIFT ACT AND THE UNIFORM HEALTH-CARE DECISIONS  
ACT; PROVIDING FOR ORGAN DONOR INFORMATION ON CERTAIN MOTOR  
VEHICLE RECORDS; AMENDING AND ENACTING SECTIONS OF THE NMSA  
1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-6A-1 NMSA 1978 (being Laws 1995,  
Chapter 116, Section 1) is amended to read:

"24-6A-1. DEFINITIONS.--As used in the Uniform  
Anatomical Gift Act:

A. "anatomical gift" means a donation of all or  
part of a human body to take effect upon or after death;

B. "decedent" means a deceased individual and  
includes a stillborn infant;

C. "designated requester" means a person who has  
completed a course offered or approved by a procurement  
organization that trains persons to approach potential donor  
families and request anatomical gifts;

D. "document of gift" means a card, a statement  
attached to or imprinted on a motor vehicle driver's  
license, an identification card, a will or other writing  
used to make an anatomical gift;

E. "donor" means an individual who makes an  
anatomical gift of all or part of the individual's body;

F. "enucleator" means an individual who has

completed a course in eye enucleation conducted and certified by an accredited school of medicine and who possesses a certificate of competence issued upon completion of the course;

G. "hospital" means a facility licensed, accredited or approved as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state or a subdivision of a state;

H. "part" means an organ, tissue, eye, bone, artery, blood, fluid or other portion of a human body;

I. "person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, limited liability company, association, government, governmental subdivision or agency or any other legal or commercial entity;

J. "physician" means an individual licensed or otherwise authorized to practice medicine or osteopathic medicine under the laws of any state;

K. "procurement organization" means a person licensed, accredited or approved under the laws of any state for procurement, distribution or storage of human bodies or parts. The term includes a nonprofit agency that is organized to procure eye tissue for the purpose of transplantation or research and that meets the medical standards set by the eye bank association of America;

L. "state" means a state, territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico;

M. "technician" means an individual who, under the supervision of a physician, removes or processes a part; and

N. "vascular organ" means the heart, lungs, kidneys, liver, pancreas or other organ that requires the continuous circulation of blood to remain useful for transplantation purposes and does not include human tissue, bones or corneas."

Section 2. Section 24-6A-2 NMSA 1978 (being Laws 1995, Chapter 116, Section 2) is amended to read:

"24-6A-2. MAKING, AMENDING, REVOKING AND REFUSING TO MAKE ANATOMICAL GIFTS--BY INDIVIDUAL.--

A. An individual who is at least sixteen years of age may:

(1) make an anatomical gift for any of the purposes stated in Section 24-6A-6 NMSA 1978;

(2) limit an anatomical gift to one or more of those purposes;

(3) refuse to make an anatomical gift; or

(4) revoke an anatomical gift.

B. An anatomical gift may be made only by a document of gift signed by the donor or by complying with the provisions of Section 66-5-10 NMSA 1978. If the donor cannot sign, the document of gift shall be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed. Revocation, suspension, expiration or cancellation of the license or

identification card does not invalidate the anatomical gift.

C. A document of gift may designate a particular physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, technician or enucleator to carry out the appropriate procedures.

D. An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

E. A donor may amend or revoke an anatomical gift, not made by will, only by:

- (1) a signed statement;
- (2) an oral statement made in the presence of two individuals;
- (3) any form of communication during a terminal illness or injury addressed to a physician; or
- (4) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

F. The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in Subsection E of this section.

G. An anatomical gift that is not revoked by the

donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

H. An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a writing signed in the same manner as a document of gift;

(2) complying with the provisions of Section 66-5-10 or 66-5-401 NMSA 1978; or

(3) any other writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

I. In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under Section 24-6A-3 NMSA 1978 or on a removal or release of other parts under Section 24-6A-4 NMSA 1978.

J. In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to Subsection H of this section."

Section 3. Section 24-6A-3 NMSA 1978 (being Laws 1995, Chapter 116, Section 3) is amended to read:

"24-6A-3. MAKING, REVOKING AND OBJECTING TO ANATOMICAL GIFTS--BY OTHERS.--

A. Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:

(1) a guardian of the person of the decedent at the time of death, if expressly authorized by the court to make health care decisions for the decedent;

(2) an agent under a durable power of attorney that expressly authorizes the agent to make health care decisions on behalf of the decedent;

(3) the spouse of the decedent unless legally separated or unless there is a pending petition for annulment, divorce, dissolution of marriage or separation;

(4) an adult son or daughter of the decedent if only one is present or a majority of adult children present;

(5) either parent of the decedent;

(6) an adult brother or sister of the decedent if only one is present or a majority of adult siblings present;

(7) a grandparent of the decedent; or

(8) an adult who has exhibited special care and concern for the decedent and who is familiar with the decedent's values.

B. An anatomical gift may not be made by a person listed in Subsection A of this section if:

(1) a person in a prior class is available at the time of death to make an anatomical gift;

(2) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(3) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

C. An anatomical gift by a person authorized under Subsection A of this section shall be made by:

(1) a document of gift signed by the person; or

(2) the person's telegraphic, recorded telephonic or other recorded message or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

D. An anatomical gift by a person authorized under Subsection A of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, technician or enucleator removing the part knows of the revocation.

E. A failure to make an anatomical gift under Subsection A of this section is not an objection to the making of an anatomical gift."

Section 4. Section 24-6A-5 NMSA 1978 (being Laws 1995, Chapter 116, Section 5) is amended to read:

"24-6A-5. REQUIRED REQUEST--SEARCH AND NOTIFICATION--  
CIVIL OR CRIMINAL IMMUNITY.--

A. If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to Subsection A of Section 24-6A-3 NMSA 1978. The request shall be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in Section 24-6A-6 NMSA 1978. An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual making the request and of the name, response and relationship to the patient of the person to whom the request was made. The secretary of health may adopt regulations to implement this subsection.

B. The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(1) a law enforcement officer, firefighter, emergency medical technician, emergency medical services first responder or other emergency rescuer finding an individual who the searcher believes is dead or near death;



and

(2) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

C. If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by Paragraph (1) of Subsection B of this section and the individual or body to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the document or other evidence shall be sent to the hospital.

D. If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to Subsection A of Section 24-6A-3 NMSA 1978 or a release and removal of a part has been permitted pursuant to Section 24-6A-4 NMSA 1978, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

E. A person who in good faith acts or attempts to act in accordance with the provisions of the Uniform Anatomical Gift Act or the anatomical gift laws of another state is not liable for damages in a civil action or subject to prosecution in a criminal proceeding for his acts."

Section 5. Section 24-6A-15 NMSA 1978 (being Laws

1995, Chapter 116, Section 15) is amended to read:

"24-6A-15. SHORT TITLE.--Chapter 24, Article 6A NMSA 1978 may be cited as the "Uniform Anatomical Gift Act"."

Section 6. A new section of the Uniform Anatomical Gift Act is enacted to read:

"DEATH RECORD REVIEWS.--Every hospital shall work jointly with the appropriate procurement organization to conduct death record reviews at least annually. The procurement organization shall compile the results of the death record reviews and provide a report to the department of health by September 1 of each year; provided that the report to the department shall not identify hospitals, individual donors or recipients."

Section 7. A new section of the Uniform Anatomical Gift Act is enacted to read:

"IDENTIFICATION OF POTENTIAL DONORS.--

A. Each hospital in New Mexico, with the concurrence of its medical staff, shall develop by July 1, 2000 a protocol for identifying potential donors. The protocol shall be developed in collaboration with a procurement organization. The protocol shall provide that at or near the time of a patient's death and prior to the removal of life support, the hospital shall contact a procurement organization to determine the suitability of the patient as a donor. The person designated by the hospital to contact the procurement organization shall have the following information available prior to making the contact:

(1) the patient's identifier number;

- (2) the patient's age;
- (3) the cause of death; and
- (4) any past medical history available.

B. The procurement organization shall determine the suitability for donation. If the procurement organization determines that donation is not appropriate based on established medical criteria, that determination shall be noted by hospital personnel on the patient's record and no further action is necessary.

C. If the procurement organization determines that the patient is a suitable candidate for donation, the procurement organization shall initiate donor proceedings by making a reasonable search for a document of gift or other information identifying the patient as a donor or as an individual who has refused to make an anatomical gift.

D. The hospital must have and implement written protocols that:

- (1) incorporate an agreement with a procurement organization under which the hospital must notify, in a timely manner, the procurement organization or a third party designated by the procurement organization of patients whose deaths are imminent and prior to the removal of life support from a patient who has died in the hospital;

- (2) ensure that the retrieval, processing, preservation, storage and distribution of tissues and eyes does not interfere with vascular organ procurement;

- (3) ensure that the family of each potential donor is informed of its options to donate organs,

tissues or eyes or to decline to donate. The person designated by the hospital to initiate the request to the family must be an organ procurement organization employee or a designated requester;

(4) encourage discretion and sensitivity with respect to the circumstances, views and beliefs of the families of potential donors; and

(5) ensure that the hospital works cooperatively with the procurement organization in educating hospital staff on donation issues, reviewing death records to improve identification of potential donors and maintaining potential donors while necessary testing and placement of anatomical gifts take place.

E. Every hospital in the state shall establish a committee to develop and implement its organ and tissue donation policy and procedure to assist its staff in identifying and evaluating terminal patients who may be suitable organ or tissue donors. The committee shall include members of the administrative, medical and nursing staffs and shall appoint a member to act as a liaison between the hospital and the state procurement organization."

Section 8. A new section of the Uniform Anatomical Gift Act is enacted to read:

"IDENTIFICATION OF POTENTIAL DONEES.--

A. If an anatomical gift of a vascular organ is made in New Mexico to a New Mexico procurement organization for transplantation purposes and the donor does not name a

specific donee and the vascular organ is deemed suitable for transplantation, the New Mexico procurement organization shall use its best efforts to determine if there is a suitable recipient in New Mexico.

B. The New Mexico procurement organization may in its sole discretion enter into reciprocal agreements for the sharing of vascular organs with procurement organizations in other states. The terms of these reciprocal vascular organ sharing arrangements may provide that a vascular organ donated to a New Mexico procurement organization may be transferred to a procurement organization in another state for transplantation.

C. A New Mexico procurement organization may transfer a vascular organ to a procurement organization in another state or suitable recipient located in another state for transplantation only if:

(1) a suitable donee awaiting organ transplant in New Mexico cannot be found in a reasonable amount of time; or

(2) the New Mexico procurement organization has a reciprocal agreement for the sharing of vascular organs with a procurement organization in another state."

Section 9. Section 24-7A-4 NMSA 1978 (being Laws 1995, Chapter 182, Section 4, as amended) is amended to read:

"24-7A-4. OPTIONAL FORM.--The following form may, but need not, be used to create an advance health-care directive. The other sections of the Uniform Health-Care Decisions Act govern the effect of this or any other writing

used to create an advance health-care directive. An individual may complete or modify all or any part of the following form:

"OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE

**Explanation**

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your primary physician.

THIS FORM IS OPTIONAL. Each paragraph and word of this form is also optional. If you use this form, you may cross out, complete or modify all or any part of it. You are free to use a different form. If you use this form, be sure to sign it and date it.

PART 1 of this form is a power of attorney for health care. PART 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a health-care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for

you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition;
- (b) select or discharge health-care providers and institutions;
- (c) approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and
- (d) direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.

PART 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding life-sustaining treatment, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. In addition, you may express your wishes regarding whether you want to make an anatomical gift of some or all of your organs and tissue. Space is also provided for you to add to the choices you have made or for you to write out any

additional wishes.

PART 3 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is recommended but not required that you request two other individuals to sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

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PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

\_\_\_\_\_

—

(name of individual you choose as agent)

\_\_\_\_\_

—

(address) (city) (state) (zip code)

\_\_\_\_\_



-

(home phone) (work phone)

If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

\_\_\_\_\_

-

(name of individual you choose as first alternate agent)

\_\_\_\_\_

-

(address) (city) (state) (zip code)

\_\_\_\_\_

-

(home phone) (work phone)

If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

\_\_\_\_\_

-

(name of individual you choose as second alternate agent)

\_\_\_\_\_

-

(address) (city) (state) (zip code)

\_\_\_\_\_

-

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized

to obtain and review medical records, reports and information about me and to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition, hydration and all other forms of health care to keep me alive, except as I state here:

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(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE:

My agent's authority becomes effective when my primary physician and one other qualified health-care professional determine that I am unable to make my own health-care decisions. If I initial this box [ ], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make

health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my

person needs to be appointed for me by a court, I nominate

the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may cross out any wording you do not want.

(6) END-OF-LIFE DECISIONS: If I am unable to make or communicate decisions regarding my health care, and IF (i) I have an incurable or irreversible condition that will result in my death within a relatively short time, OR (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, OR (iii) the likely risks and burdens of treatment would outweigh the expected benefits, THEN I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have initialed below in **one** of the following three boxes:

[ ] I CHOOSE NOT To Prolong Life

I do not want my life to be prolonged.

[ ] I CHOOSE To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

I CHOOSE To Let My Agent Decide  
My agent under my power of attorney for  
health care may make life-sustaining treatment decisions for  
me.

(7) ARTIFICIAL NUTRITION AND HYDRATION: If I  
have chosen above NOT to prolong life, I also specify by  
marking my initials below:

- I DO NOT want artificial nutrition OR  
 I DO want artificial nutrition.  
 I DO NOT want artificial hydration unless  
required for my comfort OR  
 I DO want artificial hydration.

(8) RELIEF FROM PAIN: Regardless of the choices  
I have made in this form and except as I state in the  
following space, I direct that the best medical care  
possible to keep me clean, comfortable and free of pain or  
discomfort be provided at all times so that my dignity is  
maintained, even if this care hastens my death:

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—

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—

(9) ANATOMICAL GIFT DESIGNATION: Upon my death  
I specify as marked below whether I choose to make an  
anatomical gift of all or some of my organs or tissue:

- I CHOOSE to make an anatomical gift of all  
of my organs or tissue to be determined by medical  
suitability at the time of death, and artificial support may

be maintained long enough for organs to be removed

I CHOOSE to make a partial anatomical gift of some of my organs and tissue as specified below, and artificial support may be maintained long enough for organs to be removed.

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I REFUSE to make an anatomical gift of any of my organs or tissue.

I CHOOSE to let my agent decide.

(10) OTHER WISHES: (If you wish to write your own instructions, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

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—

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—

(Add additional sheets if needed.)

PART 3

PRIMARY PHYSICIAN

(11) I designate the following physician as my primary physician:

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—

(name of physician)

—  
(address) (city) (state) (zip code)

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—  
(phone)

If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

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—  
(name of physician)

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—  
(address) (city) (state) (zip code)

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—  
(phone)

\* \* \* \* \*

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) REVOCATION: I understand that I may revoke this OPTIONAL ADVANCE HEALTH-CARE DIRECTIVE at any time, and that if I revoke it, I should promptly notify my supervising health-care provider and any health-care institution where I am receiving care and any others to whom I have given copies of this power of attorney. I understand that I may revoke the designation of an agent either by a signed writing or by

personally informing the supervising health-care provider.

(14) SIGNATURES: Sign and date the form here:

\_\_\_\_\_  
(date) (sign your name)

\_\_\_\_\_  
(address) (print your name)

\_\_\_\_\_  
(city) (state) (your social security number)

(Optional) SIGNATURES OF WITNESSES:

First witness Second witness  
\_\_\_\_\_  
(print name) (print name)

\_\_\_\_\_  
(address) (address)

\_\_\_\_\_  
(city) (state) (city) (state)

\_\_\_\_\_  
(signature of witness) (signature of witness)

\_\_\_\_\_  
(date) (date) ". "

Section 10. Section 24-7A-9 NMSA 1978 (being Laws 1995, Chapter 182, Section 9) is amended to read:

"24-7A-9. IMMUNITIES.--

A. A health-care provider or health-care institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or health-care institution is not subject to civil or criminal liability or to discipline for

unprofessional conduct for:

(1) complying or attempting to comply with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care or make an anatomical gift;

(2) declining to comply with a health-care decision of a person based on a belief that the person then lacked authority;

(3) complying or attempting to comply with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated;

(4) declining to comply with a health-care directive as permitted by Subsection E or F of Section 24-7A-7 NMSA 1978; or

(5) complying or attempting to comply with any other provision of the Uniform Health-Care Decisions Act.

B. An individual acting as agent, guardian or surrogate under the Uniform Health-Care Decisions Act is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith."

Section 11. A new section of the Motor Vehicle Code is enacted to read:

"DWI PREVENTION AND EDUCATION PROGRAM--ORGAN DONATION.-  
-DWI prevention and education programs for instruction



permits and driver's licenses shall include information on organ donation and the provisions of the Uniform Anatomical Gift Act." \_\_\_\_\_

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