

CHAPTER 42

CHAPTER 42, LAWS 2002

AN ACT

RELATING TO ANATOMICAL GIFTS; CLARIFYING THE LEGAL BASIS OF A DOCUMENT OF GIFT; 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-5 NMSA 1978 (being Laws 1995, Chapter 116, Section 5, as amended) 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 person 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 rules 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 a person 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 a person who the searcher believes is dead or near death; and

(2) a hospital, upon the admission of a person 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 person or body to whom the document or evidence 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, that a release and removal of a part has been permitted pursuant to Section 24-6A-4 NMSA 1978, that a patient or a person identified as in transit to the hospital is a donor or that an anatomical gift has been made in a document of gift, 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 2. Section 24-6A-6 NMSA 1978 (being Laws 1995, Chapter 116, Section 6) is amended to read:

"24-6A-6. PERSONS WHO MAY BECOME DONEES--PURPOSES FOR WHICH ANATOMICAL GIFTS MAY BE MADE.--

A. The following persons may become donees of anatomical gifts for the purposes stated:

(1) a hospital, physician, procurement organization or an accredited medical school, dental school, college or university, for transplantation, therapy, medical or dental education, research or advancement of medical or dental science; or

(2) a designated individual, for transplantation or therapy needed by that individual. A donee may not be designated on the basis of the donee's race, age, religion, color, national origin, ancestry, gender, sexual orientation or physical or mental handicaps.

B. An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated in the document of gift or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital or procurement organization.

C. If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior

class under Subsection A of Section 24-6A-3 NMSA 1978, the donee shall not accept the anatomical gift."

Section 3. A new section of the Uniform Anatomical Gift Act is enacted to read:

"DOCUMENT OF GIFT AS A LEGAL DOCUMENT.--A document of gift, which includes a motor vehicle driver's license, constitutes a legal document and has sufficient legal authority to be accepted by a designated or undesignated donee of anatomical gifts pursuant to the Uniform Anatomical Gift Act."

Section 4. Section 66-5-10 NMSA 1978 (being Laws 1978, Chapter 35, Section 232, as amended) is amended to read:

"66-5-10. APPLICATION FOR LICENSE--INFORMATION--TRANSFER TO LICENSE.--

A. Within the forms prescribed by the department for applications and licenses of drivers of motor vehicles, a space shall be provided to show whether the applicant is a donor as provided in the Uniform Anatomical Gift Act. Anyone applying for a license may, if he desires, indicate his donor status on the space provided on the application, and this information, if given by an applicant, shall be shown upon the license issued. The form and driver's license shall be signed by the donor in the presence of a witness who shall also sign the form in the donor's presence. The department shall, as soon as practicable, include the following donor statement on the application form:

"I, _____, hereby make an
(Name of applicant/donor)
anatomical gift effective upon my death. A
medical evaluation at the time of my death shall
determine the organs and tissues suitable for
donation.

(Signature of donor)

(Signature of parent or guardian is required if the donor is
under sixteen years of age.)"

B. The department shall mark the donor status on each person's driver's license record and shall retain each application form or its image of a person who wishes to be a donor. The department shall create and maintain a statewide donor registry and shall provide on-line computer terminal access to the donor registry to organ procurement agencies and procurement organizations, as defined in the Uniform

Anatomical Gift Act. Authorized hospital or organ and tissue donor program personnel, immediately prior to or after a donor's death, may request verification of the donor's status from the department and may obtain a copy of the application from the department."

HOUSE JUDICIARY COMMITTEE
SUBSTITUTE FOR HOUSE BILL 253