

1 §2351. Definitions

2 (1) ~~"Bank or storage facility" means a facility licensed or approved under the~~
3 ~~laws of any state for storage of human bodies or parts thereof, for use in medical~~
4 ~~education, research, therapy, or transplantation to individuals. "Adult" means a~~
5 ~~person who has attained eighteen years of age.~~

6 (2) "Agent" means a person:

7 (a) Authorized to make healthcare decisions on behalf of the principal by a
8 power of attorney for health care; or

9 (b) Expressly authorized to make an anatomical gift on behalf of the
10 principal by any other record signed by the principal.

11 (3) "Anatomical gift" or "gift" means a donation of all or part of a human
12 body to take effect after the death of the donor for the purpose of transplantation,
13 therapy, research, or education.

14 ~~(2)~~ (4) "Decedent" means an individual of any age and includes a stillborn
15 infant a deceased person whose body or part is or may be the source of an anatomical
16 gift. The term does not include a stillborn infant and, subject to restrictions imposed
17 by law, a fetus.

18 (5) "Disinterested witness" means a witness other than the spouse, child,
19 parent, sibling, grandchild, grandparent, or guardian of the person who makes,
20 amends, revokes, or refuses to make an anatomical gift, or an adult who exhibited
21 special care and concern for the person. The term does not include a recipient of an
22 anatomical gift in accordance with the provisions of R.S. 17:2353.

23 (6) "Document of gift" means a donor card or other record used to make an
24 anatomical gift. The term includes a statement or symbol on a driver's license,
25 identification card, or donor registry.

26 (7) "Donor" means a person whose body or part is the subject of an
27 anatomical gift.

28 (8) "Donor registry" means a database that contains records of anatomical
29 gifts and amendments to or revocations thereof.

1 (9) "Driver's license" means a license or permit issued by the Louisiana
2 Department of Public Safety and Corrections, office of motor vehicles, to operate a
3 vehicle, whether or not conditions are attached to the license or permit.

4 (10) "Eye bank" means a person that is licensed, accredited, or regulated
5 under federal or state law to engage in the recovery, screening, testing, processing,
6 storage, or distribution of human eyes or portions of human eyes.

7 (11) "Guardian" means a person appointed by a court to make decisions
8 regarding the support, care, education, health, or welfare of a person. The term does
9 not include a guardian ad litem.

10 ~~(3) (12)~~ "Hospital" means a facility licensed as a hospital licensed,
11 ~~accredited, or approved~~ under the laws of any state and includes a hospital or a
12 ~~facility operated as a hospital by the United States government, a state, or a~~
13 ~~subdivision of a state thereof, although not required to be licensed under state laws.~~

14 (13) "Identification card" means a card issued by the Louisiana Department
15 of Public Safety and Corrections, office of motor vehicles.

16 (14) "Know" means to have actual knowledge.

17 (15) "Minor" means a person who has not yet attained eighteen years of age.

18 (16) "Organ procurement organization" means a person designated by the
19 Secretary of the United States Department of Health and Human Services as an eye
20 bank, organ procurement organization, or tissue bank.

21 (17) "Parent" means a person whose parental rights have not been
22 terminated.

23 ~~(4) (18)~~ "Part" of a body includes organs, tissues, eyes, bones, arteries,
24 ~~blood, other fluids and other portions of bodies, and "part" includes "parts means an~~
25 ~~organ, an eye, or tissue of a human being. The term does not include the whole~~
26 ~~body.~~

27 ~~(5) (19)~~ "Person" means an individual, corporation, government or
28 ~~governmental subdivision or agency, business trust, estate, trust, partnership, limited~~
29 ~~liability company, or association, joint venture, public corporation, government or~~

1 governmental subdivision, agency, or instrumentality, or any other legal or
2 commercial entity.

3 ~~(6) (20)~~ "Physician" or "surgeon" means a physician or surgeon licensed to
4 practice means a person authorized and licensed to practice medicine or osteopathy
5 under the laws of any state.

6 (21) "Prospective donor" means a person who is dead or near death and has
7 been determined by a procurement organization to have a part that may be medically
8 suitable for transplantation, therapy, research, or education. The term does not
9 include a person who has made a refusal.

10 (22) "Reasonably available" means able to be contacted by a procurement
11 organization without undue effort and willing and able to act in a timely manner
12 consistent with existing medical criteria necessary for the making of an anatomical
13 gift.

14 (23) "Recipient" means a person into whose body a part of a decedent has
15 been or is intended to be transplanted.

16 (24) "Record" means information that is inscribed on a tangible medium or
17 that is stored in an electronic or other medium and is retrievable in perceivable form.

18 (25) "Refusal" means a record created pursuant to the provisions of R.S.
19 17:2354.1 that expressly states an intent to bar other persons from making an
20 anatomical gift of a body or part of a person.

21 (26) "Sign" means, with the present intent to authenticate or adopt a record
22 either:

23 (a) To execute or adopt a tangible symbol.

24 (b) To attach to or logically associate with the record an electronic symbol,
25 sound, or process.

26 ~~(7) (27)~~ "State" includes any state, district, commonwealth, territory, insular
27 possession, and any other area subject to the legislative authority of the United States
28 of America. means a state of the United States, the District of Columbia, Puerto

1 Rico, the United States Virgin Islands, or any territory or insular possession subject
2 to the jurisdiction of the United States.

3 ~~(8)~~ (28) "Technician" means any individual ~~who has successfully completed~~
4 ~~a course in eye enucleation for ophthalmic medical assistants approved by the~~
5 ~~American Association of Ophthalmology and possesses documentary proof of~~
6 qualifications determined to be qualified to remove or process parts by an
7 appropriate organization that is licensed, accredited, or regulated under federal or
8 state law. The term includes an enucleator.

9 (29) "Tissue" means a portion of the human body other than an organ or an
10 eye. The term does not include blood unless the blood is donated for the purpose of
11 research or education.

12 (30) "Tissue bank" means a person that is licensed, accredited, or regulated
13 under federal or state law to engage in the recovery, screening, testing, processing,
14 storage, or distribution of tissue.

15 (31) "Transplant hospital" means a hospital that furnishes organ transplants
16 and other medical and surgical specialty services required for the care of transplant
17 patients.

18 ~~(9)~~ ~~"Organ procurement organization" means an organization that is~~
19 ~~designated by the United States Department of Health and Human Services, Health~~
20 ~~Care Financing Administration or its successor, to perform or coordinate the~~
21 ~~performance of surgical recovery, preservation, and transportation of organs, and that~~
22 ~~maintains a system for locating prospective recipients for available organs.~~

23 ~~(10)~~ ~~"Louisiana-designated organ procurement organization" means the~~
24 ~~organ procurement organization for the state as designated by the secretary of the~~
25 ~~Department of Health and Hospitals under R.S. 17:2354.4(J).~~

26 ~~(11)~~ ~~"Vascular organ" means the heart, lungs, kidneys, liver, pancreas, or any~~
27 ~~other organ that requires the continuous circulation of blood to remain useful for~~
28 ~~transplantation purposes. As used in this Part, "vascular organ" does not include~~
29 ~~human tissue, bones, or corneas.~~

1 ~~make the gift may execute the document of gift either after death or immediately~~
2 ~~before death during a terminal illness or injury.~~

3 ~~C. Any gift of all or part of a body is deemed to authorize such examination~~
4 ~~as may be necessary to assure medical acceptability of gift for the purposes intended.~~

5 ~~D. No person shall disclose, disseminate or make public the fact of the~~
6 ~~making or acceptance of a gift authorized under the provisions of this Part without~~
7 ~~the prior specific consent of the donor, or if he is unable, that of the person~~
8 ~~authorized to make gifts under the provisions of Subsection (B) hereof in the order~~
9 ~~therein prescribed, unless otherwise required by law. Any person who makes any~~
10 ~~such disclosure as contemplated herein in violation of the provisions of this~~
11 ~~subsection shall be subject to absolute liability for damages in an amount of not less~~
12 ~~than five thousand dollars nor more than ten thousand dollars in a civil action~~
13 ~~instituted pursuant hereto by the person whose authorization therefor had not been~~
14 ~~obtained.~~

15 §2352.1. ~~Information about organ donation for hospital patients~~ Coordination of
16 procurement and use

17 ~~Upon discharge, each hospital may furnish to a patient, the patient's family,~~
18 ~~or a patient representative written information about organ donation, such~~
19 ~~information to be supplied at no cost to the hospital by the Louisiana Organ~~
20 ~~Procurement Agency. Each hospital in this state shall enter into an agreement or~~
21 ~~affiliation with procurement organizations for the coordination of procurement and~~
22 ~~use of anatomical gifts.~~

23 §2353. ~~Persons who may become donees~~ receive anatomical gifts; ~~purposes for~~
24 ~~which~~ purpose of ~~anatomical gifts may be made;~~ ~~out-of-state organ transfer~~

25 A. ~~The following persons may become donees of gifts of bodies or parts~~
26 ~~thereof for the purposes stated~~ An anatomical gift may be made to any of the
27 following:

1 (1) Any hospital, ~~surgeon, or physician, for medical or dental education,~~
2 ~~research, advancement of medical or dental science, therapy, or transplantation to~~
3 ~~individuals.~~

4 (2) ~~Any accredited medical school, or dental school, college, or university,~~
5 ~~engaged in medical or dental education or research for educational, research, or~~
6 ~~medical or dental science purposes.~~

7 (3) ~~The Louisiana-designated organ procurement organization, or other~~
8 ~~appropriate person, for research or education.~~

9 (4) ~~Any person operating an organ procurement organization or an organ~~
10 ~~bank or storage facility.~~

11 (5) ~~Any specific donee, for therapy or transplantation needed by him.~~

12 (2) Subject to the provisions of Subsection B of this Section, a person
13 designated by a donor.

14 (3) An eye or tissue bank.

15 B.(1) ~~In the event an anatomical gift is made in the state of Louisiana of any~~
16 ~~vascular organ for transplantation purposes, if the donor does not name a specific~~
17 ~~donee and the organ is deemed suitable for transplantation to an individual, the~~
18 ~~vascular organ shall be donated to the Louisiana-designated organ procurement~~
19 ~~organization. Said organization shall use its best efforts to determine if there is a~~
20 ~~suitable recipient in the state. If an anatomical gift to a person in accordance with~~
21 ~~this Section cannot be transplanted into the recipient, the part passes in accordance~~
22 ~~with the provisions of Subsection G of this Section in the absence of an express,~~
23 ~~contrary indication by the donor.~~

24 (2)(a) ~~Subject to the provisions of Subparagraph (b) of this Paragraph, if, in~~
25 ~~the best judgment of the Louisiana-designated organ procurement organization, the~~
26 ~~people of Louisiana would be best served by the organization's entry into reciprocal~~
27 ~~agreements for the sharing of vascular organs with qualified organ procurement~~
28 ~~organizations in other states, then the organization shall have the authority, with sole~~
29 ~~discretion as to terms and conditions, to enter into such vascular organ-sharing~~

1 ~~arrangements as it may deem advisable, necessary, or expedient. The terms of such~~
2 ~~vascular organ-sharing arrangements may provide that a vascular organ recovered~~
3 ~~in Louisiana may be transferred to an out-of-state organ procurement organization~~
4 ~~and transplanted there into a suitable recipient, before such vascular organ is offered~~
5 ~~and placed into a suitable recipient located in Louisiana.~~

6 ~~(b) Prior to the Louisiana-designated organ procurement organization~~
7 ~~entering into a reciprocal agreement, the proposed agreement shall be submitted to~~
8 ~~the Senate Committee on Health and Welfare and the House Committee on Health~~
9 ~~and Welfare for review and comment.~~

10 ~~(3) The Louisiana-designated organ procurement organization may only~~
11 ~~transfer a vascular organ to an out-of-state organ procurement organization or~~
12 ~~suitable out-of-state recipient for transplantation if either:~~

13 ~~(a) A suitable recipient in the state of Louisiana cannot be found in a~~
14 ~~reasonable amount of time.~~

15 ~~(b) The Louisiana-designated organ procurement organization has a~~
16 ~~reciprocal agreement with the out-of-state procurement organization as provided in~~
17 ~~Paragraph (2) of this Subsection.~~

18 C. If an anatomical gift of one or more specific parts or of all parts is made
19 in a document of gift that does not name a person in accordance with Subsection A
20 of this Section but identifies the purpose for which an anatomical gift may be used,
21 the following shall apply:

22 (1) If the part is an eye and the gift is for the purpose of transplantation or
23 therapy, the gift passes to the appropriate eye bank.

24 (2) If the part is tissue and the gift is for the purpose of transplantation or
25 therapy, the gift passes to the appropriate tissue bank.

26 (3) If the part is an organ and the gift is for the purpose of transplantation or
27 therapy, the gift passes to the appropriate organ procurement organization as
28 custodian of the organ.

1 (4) If the part is an organ, eye, or tissue and the gift is for the purpose of
2 research or education, the gift passes to the appropriate procurement organization.

3 D. For the purposes of Subsection C of this Section, if there is more than one
4 purpose of an anatomical gift set forth in the document of gift but the purposes are
5 not set forth in any priority, the gift shall be used for transplantation or therapy. If
6 the gift cannot be used for transplantation or therapy, the gift may be used for
7 research or education.

8 E. If an anatomical gift of one or more specific parts is made but does not
9 name a person in accordance with Subsection A of this Section and does not identify
10 the purpose of the gift, the gift may be used only for transplantation or therapy, and
11 the gift passes in accordance with the provisions of Subsection G of this Section.

12 F. If a document of gift only specifies a general intent to make an anatomical
13 gift, or by a symbol or statement of similar import, the gift may be used only for
14 transplantation or therapy, and the gift passes in accordance with the provisions of
15 Subsection G of this Section.

16 G. For purposes of Subsections B, E, and F of this Section the following
17 shall apply:

18 (1) If the part is an eye, the gift passes to the appropriate eye bank.

19 (2) If the part is tissue, the gift passes to the appropriate tissue bank.

20 (3) If the part is an organ, the gift passes to the appropriate organ
21 procurement organization as custodian of the organ.

22 H. An anatomical gift of an organ for transplantation or therapy, other than
23 an anatomical gift made in accordance with Paragraph (A)(2) of this Section, passes
24 to the organ procurement organization as custodian of the organ.

25 I. If an anatomical gift does not pass pursuant to the provisions of
26 Subsections A through H of this Section, or the body or part of the decedent is not
27 used for transplantation, therapy, research, or education, custody of the body or part
28 passes to the person obligated to properly dispose of the body or part.

1 J. A person may not accept an anatomical gift if he knows the gift was not
2 effectively made pursuant to the provisions of R.S. 17:2354 or 2356 or if the person
3 knows that the decedent made a refusal in accordance with the provisions of R.S.
4 17:2354.1 that has not been revoked. For purposes of this Subsection, if a person
5 knows that an anatomical gift was made on a document of gift, the person is
6 presumed to know of any amendment, revocation, or refusal made to the same
7 document of gift.

8 K. The Louisiana-designated organ procurement organization may only
9 transfer a vascular organ to an out-of-state organ procurement organization or
10 suitable out-of-state recipient for transplantation if a suitable recipient in the state of
11 Louisiana cannot be found in a reasonable amount of time.

12 L. Except as otherwise provided in Paragraph (A)(2) of this Section, nothing
13 in this Part affects the allocation of organs for transplantation or therapy.

14 §2354. Manner of executing anatomical ~~gifts~~ gift prior to death of donor

15 ~~A. A gift of all or part of the body under this Part may be made by will, in~~
16 ~~which case the gift becomes effective at the death of the testator without waiting for~~
17 ~~probate. If the will is not probated, or if it is declared invalid for testamentary~~
18 ~~purposes, the gift, to the extent that it has been acted upon in good faith, is~~
19 ~~nevertheless valid and effective. A donor may make, revoke, or refuse an anatomical~~
20 ~~gift by any of the following:~~

21 (1) Authorizing a statement or symbol indicating that he has made an
22 anatomical gift to be imprinted on his driver's license or identification card.

23 (2) Executing a will.

24 (3) Any form of communication addressed to at least two adults, at least one
25 of whom is a disinterested witness, during a terminal illness or injury.

26 ~~B. A gift of all or part of the body under this Part may also be made by a~~
27 ~~document other than a will. The document must be signed by the donor, in the~~
28 ~~presence of two witnesses who in turn shall sign the document in his presence. If the~~
29 ~~donor cannot sign in person, the document may be signed for him at his direction and~~

1 ~~in his presence, and in the presence of two witnesses who shall sign the document~~
2 ~~in his presence. Delivery of the document of gift during the donor's lifetime is not~~
3 ~~necessary to make the gift valid. The gift becomes effective at the death of the~~
4 ~~donor. A donor or other person authorized to make an anatomical gift pursuant to~~
5 ~~R.S. 17:2352 may make an anatomical gift by any of the following:~~

6 ~~(1) Verbally, by telephone, provided that the conversation is recorded and~~
7 ~~a record of such conversation is maintained.~~

8 ~~(2) Verbally when expressed or given before two witnesses.~~

9 ~~(3) Verbally, by telephone, provided that the conversation is witnessed.~~

10 ~~(4) In accordance with Subsection C of this Section.~~

11 ~~C. The document of gift may consist of a properly executed card carried on~~
12 ~~the donor's person or in his effects. The document of gift also may be printed on the~~
13 ~~reverse side of an operator's or chauffeur's license as provided by R.S. 32:410. A~~
14 ~~donor or other person authorized to make an anatomical gift pursuant to R.S.~~
15 ~~17:2352 may make a gift by a donor card or other record signed by the person~~
16 ~~making the gift or by authorizing that a statement or symbol indicating that a gift has~~
17 ~~been made be included on a donor registry. If the donor or other person is physically~~
18 ~~unable to sign a record, the record may be signed by another person at the direction~~
19 ~~of the person making the gift and the record shall:~~

20 ~~(1) Be witnessed by two adults, one of whom is a disinterested witness, who~~
21 ~~have signed at the request of the person making the gift; and~~

22 ~~(2) State that it has been signed and witnessed as provided in Paragraph (1)~~
23 ~~of this Subsection.~~

24 ~~D. The gift may be made either to a named donee or without the naming of~~
25 ~~a donee. If the latter, the gift may be accepted by and utilized under the direction of~~
26 ~~the attending physician at or following death. If the gift is made to a named donee~~
27 ~~who is not reasonably available at the time and place of death, and the gift is~~
28 ~~evidenced by a properly executed card or other writing carried on the donor's person~~
29 ~~or in his effects, the attending physician at or following death, in reliance upon the~~

1 ~~science or for the replacement or rehabilitation of eyes in living persons. Any form~~
2 ~~of communication made by the person during a terminal illness or injury addressed~~
3 ~~to at least two adults, one of whom is a disinterested witness.~~

4 ~~B.(1) Neither the coroner, physician, surgeon, technician, hospital, bank, or~~
5 ~~storage facility, nor the donee, who acts in good faith to comply with this Section~~
6 ~~shall be liable in any civil action to a claimant who alleges that his authorization for~~
7 ~~use of the eyes was required. A signed record, shall be witnessed by at least two~~
8 ~~adults, one of whom is a disinterested witness, and shall state that it has been signed~~
9 ~~and witnessed as provided in Subsection A of this Section.~~

10 ~~(2) The provisions of this Subsection shall not be construed as limiting or~~
11 ~~restricting the liability of a coroner, physician, surgeon, technician, hospital, bank~~
12 ~~or storage facility or the donee as provided by R.S. 17:2357(C).~~

13 ~~(3) The parish coroner, deputy coroner, or any legal representative or agent~~
14 ~~of the coroner acting pursuant to the provisions of this Section shall not authorize the~~
15 ~~removal of the eyes of a decedent where the coroner, deputy coroner, or coroner's~~
16 ~~legal representative or agent derives or may derive any direct or indirect financial~~
17 ~~benefit relative to the removal, donation, or use of the eyes.~~

18 ~~C. A person who has made a refusal to make an anatomical gift, may amend~~
19 ~~or revoke the refusal in any of the following ways:~~

20 ~~(1) In the manner provided in Subsection A of this Section for making a~~
21 ~~refusal.~~

22 ~~(2) By subsequently making an anatomical gift in accordance with R.S.~~
23 ~~17:2354 that is inconsistent with the refusal.~~

24 ~~(3) By destroying or canceling the record or a portion thereof evidencing the~~
25 ~~refusal, with the intent of revocation.~~

26 ~~D. Except as otherwise provided in R.S. 17:2354.2, in the absence of an~~
27 ~~express contrary indication set forth in the refusal, an unrevoked refusal bars all~~
28 ~~other persons from making an anatomical gift of the body or part of the person.~~

1 §2354.2. ~~Coroner's consent for kidney removal~~ Preclusive effect of anatomical gift;
2 amendment; revocation

3 A. ~~A physician or surgeon may remove the kidneys of a decedent~~
4 ~~immediately following certification of death provided:~~ Except as otherwise provided
5 in Subsection G of this Section and subject to Subsection F of this Section, in the
6 absence of an express, contrary indication by the donor, a person other than the
7 donor is barred from making, amending, or revoking an anatomical gift of the body
8 or part of the donor if the gift complies with R.S. 17:2354 or 2356.

9 (1) ~~There is written authorization by a person empowered to execute an~~
10 ~~anatomical gift as provided in R.S. 17:2352(B); or~~

11 (2) ~~There is authorization by the parish coroner; and~~

12 (3) ~~The kidneys will be or are intended to be donated to an authorized donee~~
13 ~~of gifts of bodies or parts thereof as defined in R.S. 17:2353 for the purpose of~~
14 ~~advancing medical science or for the replacement of kidneys in living persons.~~

15 B.(1) ~~Neither the coroner, physician, surgeon, technician, hospital, bank, or~~
16 ~~storage facility, nor the donee, who acts in good faith to comply with this Section,~~
17 ~~shall be liable in any civil action to a claimant who alleges that his authorization for~~
18 ~~use of the kidneys was required.~~ A revocation of a gift in accordance with R.S.
19 17:2356 is not a refusal and does not bar another person from making an anatomical
20 gift of the body or part of the donor in accordance with this Part.

21 (2) ~~The provisions of this Subsection shall not be construed as limiting or~~
22 ~~restricting the liability of a coroner, physician, surgeon, technician, hospital, bank~~
23 ~~or storage facility or the donee as provided by R.S. 17:2357(C).~~

24 (3) ~~The parish coroner, deputy coroner, or any legal representative or agent~~
25 ~~of the coroner acting pursuant to the provisions of this Section shall not authorize the~~
26 ~~removal of the kidneys of a decedent where the coroner, deputy coroner, or coroner's~~
27 ~~legal representative or agent derives or may derive any direct or indirect financial~~
28 ~~benefit relative to the removal, donation, or use of the kidneys.~~

1 C. If a person other than the donor makes an unrevoked anatomical gift of
2 the body or part of the donor in accordance with R.S. 17:2354 or amends a gift of the
3 body or part of the donor in accordance with R.S. 17:2356, another person may not
4 make, amend, or revoke the gift in accordance with R.S. 17:2356.

5 D. A revocation of an anatomical gift of the body or part of a donor in
6 accordance with R.S. 17:2356 by a person other than the donor does not bar another
7 person from making an anatomical gift of the body or part in accordance with R.S.
8 17:2354 or 2356.

9 E. In the absence of an express, contrary indication by the donor or other
10 person authorized to make an anatomical gift, an anatomical gift of a part is neither
11 a refusal to give another part nor a limitation on the making of a gift of another part
12 at a later time by the donor or another person.

13 F. In the absence of an express, contrary indication by the donor or other
14 person authorized to make an anatomical gift, an anatomical gift of a part for one or
15 more of the purposes in R.S. 17:2352 is not a limitation on the making of an
16 anatomical gift of the part for any other purpose in accordance with R.S. 17:2354 or
17 2356.

18 G. If an unemancipated minor donor dies, his reasonably available parent
19 may revoke or amend the anatomical gift.

20 ~~§2354.3. Coroner's consent for heart, lungs, liver, soft tissue, or bone removal~~
21 Authority to make an anatomical gift of a body or part

22 ~~A. A physician or surgeon may remove the heart, lungs, liver, soft tissue, or~~
23 ~~bone of a decedent immediately following certification of death provided: Subject~~
24 ~~to Subsections B and C of this Section and unless barred by R.S. 17:2354.1 or~~
25 ~~2354.2, an anatomical gift of the body or part of a decedent for the purpose of~~
26 ~~transplantation, therapy, research, or education may be made by any reasonably~~
27 ~~available member of the following classes, in the following order of priority:~~

28 ~~(1) There is written authorization by a person empowered to execute an~~
29 ~~anatomical gift as provided in R.S. 17:2352(B); or~~ The agent who could have made

1 an anatomical gift in accordance with R.S. 17:2352 immediately before the death of
2 the decedent.

3 ~~(2) There is authorization by the parish coroner; and~~ The surviving spouse
4 of the decedent.

5 ~~(3) The heart, lungs, liver, soft tissue, or bone will be donated to an~~
6 ~~authorized donee of gifts of bodies or parts thereof as defined in R.S. 17:2353 for the~~
7 ~~purpose of advancing medical science or for the replacement of the heart, lungs,~~
8 ~~liver, soft tissue, or bone in living persons.~~ The adult children of the decedent.

9 (4) The parents of the decedent.

10 (5) The adult siblings of the decedent.

11 (6) The adult grandchildren of the decedent.

12 (7) The grandparents of the decedent.

13 (8) An adult who exhibited special care and concern for the decedent.

14 (9) The person acting as guardian of the decedent at the time of death.

15 (10) Any other person having the authority to dispose of the body of the
16 decedent.

17 ~~B.(1) Neither the coroner, physician, surgeon, technician, hospital, bank or~~
18 ~~storage facility, nor the donee, who acts in good faith to comply with this Section~~
19 ~~shall be liable in any civil action to a claimant who alleges that his authorization for~~
20 ~~use of the heart, lungs, liver, soft tissue, or bone was required. If there is more than~~
21 ~~one member of a class listed in Subsection A of this Section entitled to make an~~
22 ~~anatomical gift, an anatomical gift may be made by a member of the class unless that~~
23 ~~member or a person to which the gift may pass in accordance with R.S. 17:2353~~
24 ~~knows of an objection by another member of the class. If an objection is known, the~~
25 ~~gift may be made only by a majority of the members of the class who are reasonably~~
26 ~~available.~~

27 ~~(2) The provisions of this Subsection shall not be construed as limiting or~~
28 ~~restricting the liability of a coroner, physician, surgeon, technician, hospital, bank~~
29 ~~or other storage facility, or the donee as provided by R.S. 17:2357(C).~~

1 ~~(3) The parish coroner, deputy coroner, or any legal representative or agent~~
2 ~~of the coroner acting pursuant to the provisions of this Section shall not authorize the~~
3 ~~removal of the heart, lungs, liver, soft tissue, or bone of a decedent where the~~
4 ~~coroner, deputy coroner, or coroner's legal representative or agent derives or may~~
5 ~~derive any direct or indirect financial benefit relative to the removal, donation, or use~~
6 ~~of the heart, lungs, liver, soft tissue, or bone.~~

7 ~~(4) No coroner, deputy coroner, or any legal representative or agent of the~~
8 ~~coroner shall authorize the removal of kidneys, heart, lungs, liver, soft tissue or bone~~
9 ~~where the coroner or deputy coroner derives an economic benefit in such a~~
10 ~~transaction.~~

11 C. A person may not make an anatomical gift if at the time of the death of
12 the decedent, a person in a higher ranking class is reasonably available to make or
13 to object to the making of an anatomical gift.

14 §2354.4. ~~Duties of hospital administrator; training; coordination~~ Sale or purchase
15 of parts prohibited

16 A. ~~As used in this Section:~~ Except as otherwise provided in Subsection B of
17 this Section, a person that for valuable consideration, knowingly purchases or sells
18 a part for transplantation or therapy, if removal of the part is intended to occur after
19 the death of the person, shall upon conviction be subject to a fine not exceeding fifty
20 thousand dollars or imprisonment not exceeding five years with or without hard
21 labor, or both.

22 ~~(1) "Administrator" means the chief operating officer of a hospital.~~

23 ~~(2) "Death" shall have the meaning provided in R.S. 9:111.~~

24 ~~(3) "Hospital" means any institution, place, building, or agency, public or~~
25 ~~private, whether for profit or not, devoted primarily to the maintenance and operation~~
26 ~~of facilities for ten or more individuals for the diagnosis, treatment, or care of~~
27 ~~persons admitted for overnight stay or longer who are suffering from illness, injury,~~
28 ~~infirmity, or deformity or other physical condition for which obstetrical, medical, or~~

1 surgical services would be available and appropriate. The term "hospital" does not
2 include the following:

3 (a) ~~Physicians' offices or clinics where patients are not regularly kept as bed~~
4 ~~patients for twenty-four hours or more;~~

5 (b) ~~Nursing homes as defined by and regulated under the provisions of R.S.~~
6 ~~40:2009.1 through R.S. 40:2009.12;~~

7 (c) ~~Persons, schools, institutions, or organizations engaged in the care and~~
8 ~~treatment of mentally retarded children and which are required to be licensed by the~~
9 ~~provisions of R.S. 28:421 through R.S. 28:427; or~~

10 (4) ~~"Suitable candidate" means a patient who is certified by the attending~~
11 ~~physician, at or immediately before the time of death, to be a suitable donor for any~~
12 ~~organ or tissue donation based on accepted medical standards, and who has been~~
13 ~~released by the coroner in those instances required by law.~~

14 B. ~~When death occurs in a hospital, to a person determined to be a suitable~~
15 ~~candidate for organ or tissue donation based on accepted medical standards, the~~
16 ~~hospital administrator or designated representative shall request the appropriate~~
17 ~~person described in Subsection H of this Section to consent to the gift of any part of~~
18 ~~the decedent's body as an anatomical gift. A person may charge a reasonable amount~~
19 ~~for the removal, processing, preservation, quality control, storage, transportation,~~
20 ~~implantation, or disposal of a part.~~

21 * * *

22 §2354.5. Other prohibited acts

23 A person who to obtain financial gain, intentionally falsifies, forges,
24 conceals, defaces, or obliterates a document of gift, amendment, or revocation
25 thereof, or a refusal shall be subject to a fine not exceeding fifty thousand dollars or
26 imprisonment not exceeding five years with or without hard labor, or both.

27 §2354.6. Immunity

28 A. A person acting in good faith in accordance with this Part or with the
29 applicable anatomical gift law of another state, shall not be liable in a civil action,

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 criminal prosecution, or administrative proceeding for any loss or damage caused by
2 any act or omission.

3 B. Neither the person making an anatomical gift nor the estate of the donor
4 shall be liable for any injury or damage that results from the making or use of the gift
5 unless the injury or damage was caused by the gross negligence or willful or wanton
6 actions of the person.

7 C. In determining whether an anatomical gift has been made, amended, or
8 revoked in accordance with this Part, a person may rely upon representations in
9 accordance with R.S. 17:2354.2 relating to his relationship with the donor or
10 prospective donor unless the person knows that the representation is untrue.

11 §2354.7. Law governing validity; choice of law; presumption

12 A. A valid document of gift shall be executed in accordance with the
13 provisions of this Part, the laws of the state or country where it was executed, or the
14 laws of the state or country where the person making the anatomical gift was
15 domiciled, has a place of residence, or was a national at the time the document of gift
16 was executed.

17 B. If a document of gift is valid in accordance with this Part, the law of this
18 state governs the interpretation of the document of gift.

19 C. A person may presume that a document of gift or amendment thereto is
20 valid unless that person knows that it is not validly executed or it was revoked.

21 §2354.8. Donor registry

22 A. The secretary of the Department of Health and Hospitals may establish
23 or contract for the establishment of a donor registry.

24 B. The Louisiana Department of Public Safety and Corrections, office of
25 motor vehicles, shall cooperate with any person administering any donor registry
26 that this state establishes, contracts for, or recognizes for the purpose of transferring
27 to the donor registry all relevant information regarding the making, amendment to,
28 or revocation of an anatomical gift.

1 C. A donor registry shall be accessible seven days a week, twenty-four hours
2 a day and allow each of the following:

3 (1) A donor or other person authorized in accordance with R.S. 17:2352 to
4 include on the donor registry a statement or symbol that the donor has made,
5 amended, or revoked an anatomical gift.

6 (2) A procurement organization to obtain relevant information to determine,
7 at or near death of the donor or a prospective donor, whether the donor or
8 prospective donor has made, amended, or revoked an anatomical gift.

9 D. Personally identifiable information on a donor registry may not be used
10 or disclosed without the express consent of the donor, prospective donor, or person
11 that made the anatomical gift, for any purpose except to determine, at or near the
12 death of the donor, whether he has made, amended, or revoked an anatomical gift.

13 E. This Section does not prohibit any person from creating or maintaining
14 a donor registry that is not established by or contracted with the state. Any such
15 registry shall comply with Subsections C and D of this Section.

16 §2354.9. Effect of anatomical gift on advance health care directives

17 A. For the purposes of this Section, the following terms shall have the
18 following meanings.

19 (1) "Advance health care directive" means a power of attorney for health
20 care or a record signed by a prospective donor containing his direction concerning
21 health care decisions.

22 (2) "Declaration" means a record signed by a prospective donor specifying
23 the circumstance in which a life support system may be withheld or withdrawn from
24 the donor.

25 (3) "Health care decision" means any decision made regarding the health
26 care of the prospective donor.

27 B. If a prospective donor has a declaration or advance health care directive
28 and the express or implied terms of a potential anatomical gift are in conflict with
29 regard to the administration of measures necessary to ensure the medical suitability

1 of a part for transplantation or therapy, the attending physician and the donor shall
2 confer to resolve the conflict. If the conflict cannot be resolved, a reasonably
3 available agent acting for the declaration or directive, or if none, another person
4 authorized by law to make health care decisions on behalf of the donor, shall act for
5 him to resolve the conflict. The conflict shall be resolved as expeditiously as
6 possible. Information relevant to the resolution of the conflict may be obtained from
7 the appropriate procurement organization and any other person authorized to make
8 an anatomical gift for the donor in accordance with R.S. 17:2354.2. Before
9 resolution of the conflict, measures necessary to ensure the medical suitability of the
10 part may not be withheld or withdrawn from the prospective donor if doing so is not
11 contraindicated by appropriate end of life care.

12 §2355. Delivery of document of gift; right to examine

13 ~~If the gift is made by the donor to a named donee, the will or other document,~~
14 ~~or a copy thereof, may be delivered to him to expedite the appropriate procedures~~
15 ~~immediately after death, but such delivery is not necessary to validity of the gift.~~
16 ~~The document may also be deposited in any hospital or registry office that accepts~~
17 ~~such documents for safekeeping or for facilitation of procedures after death. Upon~~
18 ~~request of any interested party at or after the donor's death, the person in possession~~
19 ~~must produce the document for examination.~~

20 A. A document of gift need not be delivered during the lifetime of the donor
21 to be effective.

22 B. Upon or after the death of the donor, a person in possession of a document
23 of gift or a refusal to make an anatomical gift shall allow examination and copying
24 of the document of gift or refusal by a person authorized to make or object to the
25 making of an anatomical gift or by a person to which the gift may pass in accordance
26 with this Part.

27 §2355.1. Search for document of anatomical gift; notification

28 A. ~~A~~ The following persons shall make a reasonable search of a person
29 reasonably believed to be dead or near death for a document of gift or other

1 information ~~which may indicate that a person is~~ identifying the person as a donor or
2 a person who has refused to make such a donation ~~shall be made by:~~

3 (1) Any law enforcement officer, fireman, paramedic, or ~~anyone rendering~~
4 ~~emergency rescue services when the person is near death~~ any other emergency
5 rescuer assisting the person.

6 (2) ~~Any coroner, assistant coroner, or representative of the coroner's office~~
7 ~~who is investigating the death of a person.~~

8 (3) ~~Any hospital, upon~~ as soon as practical after the arrival of ~~a person who~~
9 ~~is dead or near death~~ the person.

10 B. ~~The results of this search, if any, shall be communicated to the hospital~~
11 ~~where the person or his body is admitted. If a document of gift or refusal to make an~~
12 ~~anatomical gift is located in accordance with this Section, and the person or decedent~~
13 ~~to whom it related is taken to a hospital, the document of gift or refusal shall be sent~~
14 ~~to the hospital.~~

15 C. ~~If a person at or near death has been admitted or is in transit to a hospital~~
16 ~~and has been identified as a donor of his body, organs, tissue, or any part thereof, the~~
17 ~~hospital shall immediately notify the named donee if one is named and known, and~~
18 ~~if not, the federally approved organ procurement agency. A person shall not be~~
19 ~~subject to criminal or civil liability for failing to discharge the duties imposed by this~~
20 ~~Section but may be subject to administrative sanctions.~~

21 * * *

22 §2356. Revocation or amendment of the gift before death

23 A. ~~If the document of gift has been delivered to a named donee, it may be~~
24 ~~revoked by either: A person authorized to make an anatomical gift in accordance~~
25 ~~with this Part may amend or revoke the gift by a signed record or a later-executed~~
26 ~~document of gift that amends or revokes a pervious gift or portion of a gift either~~
27 ~~expressly or by inconsistency.~~

28 (1) ~~The execution and delivery to the donee or his agent of a revocation in~~
29 ~~writing signed by the donor, or~~

1 ~~(2) An oral statement of revocation made in the presence of two persons,~~
2 ~~communicated to the donee or his agent, or~~

3 ~~(3) A statement during a terminal illness addressed to the attending physician~~
4 ~~and communicated to the donee, or~~

5 ~~(4) A card or writing, signed by the donor and carried on his person or in his~~
6 ~~effects, revoking the gift.~~

7 B. A signed record in accordance with Subsection A of this Section shall be
8 witnessed by at least two adults, one of whom is a disinterested witness, and state
9 that it has been signed and witnessed in accordance with law.

10 ~~B. C. Any document of gift which has not been delivered to the donee An~~
11 ~~anatomical gift executed in accordance with this Part may be revoked ~~in the manner~~~~
12 ~~set out in Subsection (A) of this section or by destruction, cancellation of the~~
13 ~~document of gift, or mutilation cancellation of the portion of the document of gift~~
14 ~~used to make the gift, with the intent to revoke.~~

15 ~~C. D. Any anatomical gift made by a will may be revoked or amended in the~~
16 ~~manner provided for revocation or amendment of wills or as provided in Subsection~~
17 ~~A of this Section.~~

18 ~~D. An anatomical gift may not be amended or revoked by any person other~~
19 ~~than the donor, except that when the gift is of the entire body, the body shall be~~
20 ~~returned after removal of all the useable organs to the surviving spouse or the next~~
21 ~~of kin upon the request of either.~~

22 E. A donor may amend or revoke an anatomical gift that was not made in a
23 will by any form of communication during a terminal illness or injury addressed to
24 at least two adults, one of whom is disinterested.

25 F. A person authorized to make an anatomical gift in accordance with this
26 Section may make a gift by executing a signed document of gift or by oral
27 communication that is electronically recorded or is contemporaneously reduced to
28 a record and signed by the individual receiving the oral communication.

1 G. Subject to Subsection E of this Section, an anatomical gift by an
2 authorized person may be amended or revoked orally or in a record by any
3 reasonably available member of a higher ranking class. If more than one member
4 of the class is available, the gift may be amended only if a majority of the members
5 agree or revoked only if a majority of the members agree or are equally divided.

6 H. A revocation in accordance with Subsection C of this Section is effective
7 only if before an incision has been made to remove a part from the body of the donor
8 or before invasive procedures have begun to prepare the recipient, the procurement
9 organization, transplant hospital, or physician or technician knows of the revocation.

10 §2357. Rights and duties ~~at death~~ of procurement organizations; others

11 ~~A. The donee may accept or reject the gift. If the donee accepts, and if the~~
12 ~~gift is of the entire body, the donee or his agent, if he deems it desirable, may~~
13 ~~authorize embalming and funeral services. If the gift is of a part of the body, the~~
14 ~~donee or his agent, immediately after the death of the donor and prior to embalming,~~
15 ~~may cause the part included in the gift to be removed without unnecessary~~
16 ~~mutilation. After removal of the part, custody of the remainder of the body shall be~~
17 ~~transferred promptly to the surviving spouse or next of kin or other persons under~~
18 ~~obligation to dispose of the body. When a hospital refers a person at or near death~~
19 ~~to a procurement organization, the procurement organization shall make a reasonable~~
20 ~~search of the records of the office of motor vehicles and any known donor registry~~
21 ~~to ascertain whether the person has made an anatomical gift.~~

22 ~~B. The time of death shall be determined by the physician who attends the~~
23 ~~donor at his death, or, if none, the physician who certifies the death. The physician~~
24 ~~shall not be a participant in the procedures for removing the part or transplanting it.~~
25 A procurement organization shall be allowed reasonable access to information in the
26 records of the office of motor vehicles to ascertain whether a person at or near death
27 is a donor.

28 ~~C. The donee, agent of a donee, other person authorized to accept and utilize~~
29 ~~the gift, or any person authorized by the donor or donee to perform the surgical~~

1 ~~operation to remove parts covered by the gift is not liable for damages in any civil~~
2 ~~action or subject to prosecution in any criminal proceeding for his act if he acts in~~
3 ~~good faith and without actual knowledge of revocation of the gift and in accord with~~
4 ~~the terms of a gift under this Part, in accord with a document carried by the donor as~~
5 ~~provided in this Part, or in accord with the laws of the state in which the document~~
6 ~~of gift was executed. When a hospital refers a person at or near death to a~~
7 ~~procurement organization, the procurement organization may conduct any reasonable~~
8 ~~examination necessary to ensure the medical suitability of a part that is or may be the~~
9 ~~subject of an anatomical gift for transplantation, therapy, research, or education.~~
10 ~~During the examination period, measures necessary to ensure the medical suitability~~
11 ~~of the part may not be withdrawn unless the hospital or procurement organization~~
12 ~~knows that the person expressed a contrary intent.~~

13 D. ~~The provisions of this Part are subject to the laws of this state prescribing~~
14 ~~powers and duties with respect to autopsies. Unless otherwise prohibited by law, at~~
15 ~~any time after the death of a donor, the person to which a part passes in accordance~~
16 ~~with R.S. 17:2353 may conduct any reasonable examination necessary to ensure the~~
17 ~~medical suitability of the body or part for its intended purpose.~~

18 E. ~~Unless otherwise prohibited by law, an examination in accordance with~~
19 ~~this Section may include an examination of all medical and dental records of the~~
20 ~~donor or prospective donor.~~

21 F. ~~Upon the death of a minor who was a donor or had signed a refusal, unless~~
22 ~~a procurement organization knows he was emancipated, it shall conduct a reasonable~~
23 ~~search for his parents and provide them with an opportunity to revoke or amend the~~
24 ~~anatomical gift or the refusal.~~

25 G. ~~Upon referral by a hospital in accordance with Subsection A of this~~
26 ~~Section, a procurement organization shall make a reasonable search for any person~~
27 ~~listed in R.S. 17:2354.2 having priority to make an anatomical gift on behalf of a~~
28 ~~person. If a procurement organization receives information that an anatomical gift~~

1 was made, amended, or revoked, it shall promptly advise the person of all relevant
2 information.

3 H. Subject to R.S. 17:2353, the rights of the person to which a part passes
4 in accordance with this Part are superior to the rights of all others with respect to the
5 part. The person may accept or reject an anatomical gift in whole or in part. Subject
6 to the terms of the document of gift and this Part, a person that accepts an anatomical
7 gift of an entire body may allow embalming, burial, cremation, and use of remains
8 in a funeral service. If the gift is a part, the person to which the part passes, shall
9 cause it to be removed without unnecessary mutilation prior to embalming, burial,
10 or cremation.

11 I. Neither the physician who attends the decedent at death nor the physician
12 who determines the time of the death may participate in the procedures for removing
13 or transplanting a part from the decedent.

14 J. A qualified physician or technician may remove a donated part from the
15 body of a donor.

16 §2358. Uniformity of ~~interpretation~~ application and construction

17 ~~This Part shall be so construed as to effectuate its general purpose to make~~
18 ~~uniform the law of those states which enact it. In applying and construing this Part,~~
19 consideration shall be given to the need to promote uniformity of the law with
20 respect to this subject matter among states that enact it.

21 §2358.1. Relation to electronic signatures in global and national commerce

22 This Part modifies, limits, and supersedes the Electronic Signatures in Global
23 and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify,
24 limit, or supersede Section 7001 of that Act, or authorize electronic delivery of any
25 of the notices described in Section 7003(b) of that Act.

26 Section 2. R.S. 17:2354(F) and (G), 2354.4(C) through (K), and 2355.1(D) and (E)
27 are hereby repealed in their entirety.

28 Section 3. The provisions of this Act shall become effective on July 1, 2010; if
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

- 1 effective on July 1, 2010, or on the day following such approval by the legislature,
2 whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Gallot

HB No. 1123

Abstract: Provides for a uniform Anatomical Gift Act.

- (1) Present law provides for the donation or refusal to donate organs or tissue upon death.

Proposed law rewrites present law to be uniform with the law of other states which have enacted the same Uniform Anatomical Gift Act.

- (2) Present law defines 11 terms relative to anatomical gifts.

Proposed law expands the number of definitions to 31, adding the terms "adult", "agent", "anatomical gift" or "gift", "disinterested witness", "document of gift", "donor", "donor registry", "driver's license", "eye bank", "guardian", "identification card", "know", "minor", "parent", "prospective donor", "reasonably available", "recipient", "record", "refusal", "sign", "tissue", "tissue bank", and "transplant hospital".

Proposed law deletes from the set of defined terms "bank or storage facility", "Louisiana-designated organ procurement organization", and "vascular organ".

- (3) Proposed law provides for persons who may make an anatomical gift prior to the death of the donor, persons who may receive an anatomical gift, and coordination of organ procurement and use between hospitals and organ procurement organizations.

Proposed law provides for the authority to make an anatomical gift, the manner of executing an anatomical gift prior to the death of the donor, refusal to make an anatomical gift, search for document of anatomical gift and notification, and revocation and amendment of anatomical gifts prior to death.

Proposed law provides for rights and duties of those who make anatomical gifts, organ procurement organizations, hospitals, physicians, recipients of anatomical gifts, and others.

Proposed law provides for prohibited acts, including the sale or purchase of parts, subject to a fine of up to \$50,000 or imprisonment of up to five years with or without hard labor, or both.

Proposed law provides for immunity, validity of a document of anatomical gift, effect of an anatomical gift on advance health care directives, and a donor registry.

Effective July 1, 2010.

(Amends R.S. 17:2351, 2352, 2352.1, 2353, 2354(A)-(E), 2354.1, 2354.2, 2354.3, 2354.4(A) and (B), 2355, 2355.1(A), (B), and (C), 2356, 2357, and 2358; Adds R.S. 17:2354.5-2354.9 and 2358.1; Repeals R.S. 17:2354(F) and (G), 2354.4(C)-(K), and 2355.1(D) and (E))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Restored present law provisions regarding the definition of death.
2. Made technical changes.
3. Provided that a Louisiana-designated organ procurement organization may only transfer a vascular organ to an out-of-state entity if a suitable recipient in La. cannot be found in a reasonable amount of time.
4. Added that a donor may also revoke or refuse an anatomical gift in certain ways.