

# ACT No. 937

HOUSE BILL NO. 1123

BY REPRESENTATIVES GALLOT, BALDONE, BROSSETT, BURRELL, CHAMPAGNE, FANNIN, GISCLAIR, HINES, GIROD JACKSON, KATZ, LIGI, RICHARD, RICHMOND, GARY SMITH, JANE SMITH, AND STIAES AND SENATOR THOMPSON

1 AN ACT

2 To amend and reenact R.S. 9:111(A), and R.S. 17:2351, 2352, 2352.1, 2353, 2354(A)  
3 through (E), 2354.1, 2354.2, 2354.3, 2354.4(A) and (B), 2355, 2355.1(A), (B), and  
4 (C), 2356, 2357, and 2358, to enact R.S. 17:2354.5 through 2354.9 and 2358.1, and  
5 to repeal R.S. 17:2354(F) and (G), 2354.4(C) through (K), and 2355.1(D) and (E),  
6 relative to the Louisiana Anatomical Gift Act; to make such Act uniform with that  
7 of other states; to provide for definitions; to provide for applicability; to provide for  
8 procurement; to provide for recipients; to provide for the execution of an anatomical  
9 gift; to provide for the refusal to make a gift; to provide for the authority to make a  
10 gift of a body or part; to prohibit the sale or purchase of a part and provide for  
11 penalties; to grant immunity for certain acts; to provide choice of law provisions; to  
12 provide for a donor registry; to provide for advance health directives; to provide for  
13 the delivery of the gift; to provide for the search for a gift; to provide for the  
14 revocation or amendment of a gift; to provide for the rights and duties of  
15 procurement organizations; to provide for the application of federal laws; to provide  
16 a special effective date; and to provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. R.S. 9:111(A) is hereby amended and reenacted to read as follows:

19 §111. Definition of death

20 A. A person will be considered dead if in the announced opinion of a  
21 physician, duly licensed in the state of Louisiana based on ordinary standards of  
22 approved medical practice, the person has experienced an irreversible cessation of  
23 spontaneous respiratory and circulatory functions. In the event that artificial means

1 of support preclude a determination that these functions have ceased, a person will  
 2 be considered dead if in the announced opinion of a physician, duly licensed in the  
 3 state of Louisiana based upon ordinary standards of approved medical practice, the  
 4 person has experienced an irreversible total cessation of brain function. Death will  
 5 have occurred at the time when the relevant functions ceased. In any case when  
 6 organs are to be used in a transplant, then an additional physician, duly licensed in  
 7 the state of Louisiana not a member of the transplant team, must make the  
 8 pronouncement of death unless a hospital has adopted a written policy allowing that  
 9 a single physician, duly licensed in the state of Louisiana, not a member of the  
 10 transplant team, may make the pronouncement of death. In all cases in which a  
 11 hospital written policy provides that a single physician makes the pronouncement of  
 12 death, such policy shall also require an opinion by a second physician, not a member  
 13 of the transplant team, as to the candidacy of the person for the process of organ  
 14 donation.

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15  
 16 Section 2. R.S. 17:2351, 2352, 2352.1, 2353, 2354(A) through (E), 2354.1, 2354.2,  
 17 2354.3, 2354.4(A) and (B), 2355, 2355.1(A), (B), and (C), 2356, 2357, and 2358 are hereby  
 18 amended and reenacted and R.S. 17:2354.5 through 2354.9 and 2358.1 are hereby enacted  
 19 to read as follows:

20 §2351. Definitions

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

25 (2) "Agent" means a person:

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

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

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

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

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

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

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

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

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

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

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

29           ~~(3) (12)~~ "Hospital" means a facility licensed as a hospital licensed,  
 30           accredited, or approved under the laws of any state and includes a hospital or a

1 facility operated as a hospital by the United States ~~government~~, a state, or a  
 2 subdivision of a state thereof, ~~although not required to be licensed under state laws.~~

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

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

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

7 (16) "Organ procurement organization" means a person designated by the  
 8 secretary of the United States Department of Health and Human Services as an eye  
 9 bank, organ procurement organization, or tissue bank.

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

12 ~~(4) (18) "Part" of a body includes organs, tissues, eyes, bones, arteries,~~  
 13 ~~blood, other fluids and other portions of bodies, and "part" includes "parts~~ means an  
 14 organ, an eye, or tissue of a human being. The term does not include the whole  
 15 body.

16 ~~(5) (19) "Person" means an individual, corporation, government or~~  
 17 ~~governmental subdivision or agency, business trust, estate, trust, partnership, limited~~  
 18 ~~liability company, or association, joint venture, public corporation, government or~~  
 19 ~~governmental subdivision, agency, or instrumentality, or any other legal or~~  
 20 ~~commercial entity.~~

21 ~~(6) (20) "Physician" or "surgeon" means a physician or surgeon licensed to~~  
 22 ~~practice~~ means a person authorized and licensed to practice medicine or osteopathy  
 23 under the laws of any state.

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

28 (22) "Reasonably available" means able to be contacted by a procurement  
 29 organization without undue effort and willing and able to act in a timely manner

1 consistent with existing medical criteria necessary for the making of an anatomical  
2 gift.

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

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

7 (25) "Refusal" means a record created pursuant to the provisions of R.S.  
8 17:2354.1 that expressly states an intent to bar other persons from making an  
9 anatomical gift of a body or part of a person.

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

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

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

15 ~~(7)~~ (27) "State" includes any state, district, commonwealth, territory, insular  
16 possession, and any other area subject to the legislative authority of the United States  
17 of America. means a state of the United States, the District of Columbia, Puerto  
18 Rico, the United States Virgin Islands, or any territory or insular possession subject  
19 to the jurisdiction of the United States.

20 ~~(8)~~ (28) "Technician" means any individual who has successfully completed  
21 a course in eye enucleation for ophthalmic medical assistants approved by the  
22 American Association of Ophthalmology and possesses documentary proof of  
23 qualifications determined to be qualified to remove or process parts by an  
24 appropriate organization that is licensed, accredited, or regulated under federal or  
25 state law. The term includes an enucleator.

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

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

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

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

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

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

19                   §2352. Persons Applicability; persons who may execute make an anatomical gift  
 20                   prior to the death of the donor

21                   A. ~~Any individual who is competent to execute a will may give all or any~~  
 22                   ~~part of his body for any of the purposes specified in R.S. 17:2353, the gift to take~~  
 23                   ~~effect after death. The rights of the donee are superior to the rights of the surviving~~  
 24                   ~~spouse and next of kin. The provisions of this Part shall apply to an anatomical gift~~  
 25                   ~~or amendment, revocation, or refusal to make an anatomical gift.~~

26                   B. ~~Unless he has knowledge that contrary directions have been given by the~~  
 27                   ~~decedent, any of the following persons, in the order of priority stated, may give all~~  
 28                   ~~or any part of a decedent's body for any of the purposes specified in R.S. 17:2353:~~  
 29                   Subject to the provisions of R.S. 17:2354.2, an anatomical gift of a body or part of

1 the donor may be made during his life for the purpose of transplantation, therapy,  
 2 research, or education as provided in R.S. 17:2354 by any of the following:

3 (1) ~~The spouse if one survives; if not,~~ An adult donor.

4 (2) ~~An adult son or daughter,~~ A minor donor, if he has been emancipated or  
 5 authorized under state law to apply for a driver's license.

6 (3) ~~Either parent,~~ An agent of the donor, unless the power of attorney for  
 7 health care or other record prohibits it.

8 (4) ~~An adult brother or sister,~~ A parent of the donor, if he is an  
 9 unemancipated minor.

10 (5) ~~The guardian of the person of the decedent at the time of his death,~~ The  
 11 guardian of the donor.

12 (6) ~~Any other person authorized or under obligation to dispose of the body.~~  
 13 ~~If there is no surviving spouse, and an adult son or daughter is not immediately~~  
 14 ~~available at the time of death, the gift may be made by either parent; if neither an~~  
 15 ~~adult son or daughter nor a parent is immediately available, it may be made by any~~  
 16 ~~adult brother or sister; but the donee shall not accept the gift if he or his agent has~~  
 17 ~~received notice that there is controversy within the class of relatives enabled under~~  
 18 ~~the above priorities to make the gift. The persons authorized by this subsection to~~  
 19 ~~make the gift may execute the document of gift either after death or immediately~~  
 20 ~~before death during a terminal illness or injury.~~

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

23 ~~D. No person shall disclose, disseminate or make public the fact of the~~  
 24 ~~making or acceptance of a gift authorized under the provisions of this Part without~~  
 25 ~~the prior specific consent of the donor, or if he is unable, that of the person~~  
 26 ~~authorized to make gifts under the provisions of Subsection (B) hereof in the order~~  
 27 ~~therein prescribed, unless otherwise required by law. Any person who makes any~~  
 28 ~~such disclosure as contemplated herein in violation of the provisions of this~~  
 29 ~~subsection shall be subject to absolute liability for damages in an amount of not less~~  
 30 ~~than five thousand dollars nor more than ten thousand dollars in a civil action~~





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

10           ~~(2)(a) Subject to the provisions of Subparagraph (b) of this Paragraph, if, in~~  
11           ~~the best judgment of the Louisiana-designated organ procurement organization, the~~  
12           ~~people of Louisiana would be best served by the organization's entry into reciprocal~~  
13           ~~agreements for the sharing of vascular organs with qualified organ procurement~~  
14           ~~organizations in other states, then the organization shall have the authority, with sole~~  
15           ~~discretion as to terms and conditions, to enter into such vascular organ-sharing~~  
16           ~~arrangements as it may deem advisable, necessary, or expedient. The terms of such~~  
17           ~~vascular organ-sharing arrangements may provide that a vascular organ recovered~~  
18           ~~in Louisiana may be transferred to an out-of-state organ procurement organization~~  
19           ~~and transplanted there into a suitable recipient, before such vascular organ is offered~~  
20           ~~and placed into a suitable recipient located in Louisiana.~~

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

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

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

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

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

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

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

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

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

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

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

26          F. If a document of gift specifies a general intent to make an anatomical gift  
27          by words such as "donor", "organ donor", or "body donor", or by a symbol or  
28          statement of similar import, the gift may be used only for transplantation or therapy,  
29          and the gift passes in accordance with the provisions of Subsection G of this Section.

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

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

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

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

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

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

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

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

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

27                   ~~§2354. Manner of executing anatomical gifts~~ gift prior to death of donor

28                   ~~A. A gift of all or part of the body under this Part may be made by will, in~~  
 29                   ~~which case the gift becomes effective at the death of the testator without waiting for~~  
 30                   ~~probate. If the will is not probated, or if it is declared invalid for testamentary~~

1 ~~purposes, the gift, to the extent that it has been acted upon in good faith, is~~  
 2 ~~nevertheless valid and effective.~~ A donor may make an anatomical gift by any of the  
 3 following:

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

6 (2) Executing a will.

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

9 ~~B. A gift of all or part of the body under this Part may also be made by a~~  
 10 ~~document other than a will. The document must be signed by the donor, in the~~  
 11 ~~presence of two witnesses who in turn shall sign the document in his presence. If the~~  
 12 ~~donor cannot sign in person, the document may be signed for him at his direction and~~  
 13 ~~in his presence, and in the presence of two witnesses who shall sign the document~~  
 14 ~~in his presence. Delivery of the document of gift during the donor's lifetime is not~~  
 15 ~~necessary to make the gift valid. The gift becomes effective at the death of the~~  
 16 ~~donor.~~

17 ~~C. B.~~ The document of gift may consist of a properly executed card carried  
 18 on the donor's person or in his effects. The document of gift also may be printed on  
 19 the reverse side of an operator's or chauffeur's license as provided by R.S. 32:410.  
 20 A donor or other person authorized to make an anatomical gift pursuant to R.S.  
 21 17:2352 may make a gift by a donor card or other record signed by the person  
 22 making the gift or by authorizing that a statement or symbol indicating that a gift has  
 23 been made be included on a donor registry. If the donor or other person is physically  
 24 unable to sign a record, the record may be signed by another person at the direction  
 25 of the person making the gift and the record shall:

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

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



1 with Subsection B of this Section or if he is physically unable to sign, another person  
2 acting at the direction of the person shall sign.

3 (2) ~~There is authorization by the parish coroner; and~~ A will and testament,  
4 whether or not the will is admitted to probate or invalidated after his death.

5 (3) ~~The eyes will be donated to an authorized donee of gifts of bodies or~~  
6 ~~parts thereof as defined in R.S. 17:2353 for the purposes of advancing medical~~  
7 ~~science or for the replacement or rehabilitation of eyes in living persons.~~ Any form  
8 of communication made by the person during a terminal illness or injury addressed  
9 to at least two adults, one of whom is a disinterested witness.

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

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

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

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

26 (1) In the manner provided in Subsection A of this Section for making a  
27 refusal.

28 (2) By subsequently making an anatomical gift in accordance with R.S.  
29 17:2354 that is inconsistent with the refusal.

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

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

6                    ~~§2354.2. Coroner's consent for kidney removal~~ Preclusive effect of anatomical gift;  
7                    amendment; revocation

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

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

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

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

20                   ~~B.(1) Neither the coroner, physician, surgeon, technician, hospital, bank, or~~  
21                   ~~storage facility, nor the donee, who acts in good faith to comply with this Section,~~  
22                   ~~shall be liable in any civil action to a claimant who alleges that his authorization for~~  
23                   ~~use of the kidneys was required. A revocation of a gift in accordance with R.S.~~  
24                   ~~17:2356 is not a refusal and does not bar another person from making an anatomical~~  
25                   ~~gift of the body or part of the donor in accordance with this Part.~~

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

29                   ~~(3) The parish coroner, deputy coroner, or any legal representative or agent~~  
30                   ~~of the coroner acting pursuant to the provisions of this Section shall not authorize the~~

1 ~~removal of the kidneys of a decedent where the coroner, deputy coroner, or coroner's~~  
2 ~~legal representative or agent derives or may derive any direct or indirect financial~~  
3 ~~benefit relative to the removal, donation, or use of the kidneys.~~

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

8 D. A revocation of an anatomical gift of the body or part of a donor in  
9 accordance with R.S. 17:2356 by a person other than the donor does not bar another  
10 person from making an anatomical gift of the body or part in accordance with R.S.  
11 17:2354 or 2356.

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

16 F. In the absence of an express, contrary indication by the donor or other  
17 person authorized to make an anatomical gift, an anatomical gift of a part for one or  
18 more of the purposes in R.S. 17:2352 is not a limitation on the making of an  
19 anatomical gift of the part for any other purpose in accordance with R.S. 17:2354 or  
20 2356.

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

23 ~~§2354.3. Coroner's consent for heart, lungs, liver, soft tissue, or bone removal~~  
24 Authority to make an anatomical gift of a body or part

25 ~~A. A physician or surgeon may remove the heart, lungs, liver, soft tissue, or~~  
26 ~~bone of a decedent immediately following certification of death provided: Subject~~  
27 ~~to Subsections B and C of this Section and unless barred by R.S. 17:2354.1 or~~  
28 ~~2354.2, an anatomical gift of the body or part of a decedent for the purpose of~~  
29 ~~transplantation, therapy, research, or education may be made by any reasonably~~  
30 ~~available member of the following classes, in the following order of priority:~~

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



1           (1) ~~There is written authorization by a person empowered to execute an~~  
 2           ~~anatomical gift as provided in R.S. 17:2352(B); or~~ The agent who could have made  
 3           ~~an anatomical gift in accordance with R.S. 17:2352 immediately before the death of~~  
 4           ~~the decedent.~~

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

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

11           (4) The parents of the decedent.

12           (5) The adult siblings of the decedent.

13           (6) The adult grandchildren of the decedent.

14           (7) The grandparents of the decedent.

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

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

17           (10) Any other person having the authority to dispose of the body of the  
 18          ~~decedent.~~

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

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

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

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

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

17           D. A person authorized to make an anatomical gift pursuant to R.S. 17:2352  
 18           or this Section may make an anatomical gift by any of the following:

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

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

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

23           ~~§2354.4. Duties of hospital administrator; training; coordination~~ Sale or purchase  
 24           of parts prohibited

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



1           §2354.5. Other prohibited acts

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

6           §2354.6. Immunity

7                   A. A person acting in good faith in accordance with this Part or with the  
8           applicable anatomical gift law of another state, shall not be liable in a civil action,  
9           criminal prosecution, or administrative proceeding for any loss or damage caused by  
10          any act or omission.

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

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

19          §2354.7. Law governing validity; choice of law; presumption

20                  A. A valid document of gift shall be executed in accordance with the  
21          provisions of this Part, the laws of the state or country where it was executed, or the  
22          laws of the state or country where the person making the anatomical gift was  
23          domiciled, has a place of residence, or was a national at the time the document of gift  
24          was executed.

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

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

1           §2354.8. Donor registry

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

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

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

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

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

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

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

24           §2354.9. Effect of anatomical gift on advance health care directives

25                   A. For the purposes of this Section, the following terms shall have the  
 26                   following meanings:

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

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

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

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

20                  §2355. Delivery of document of gift; right to examine

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

28                   A. A document of gift need not be delivered during the lifetime of the donor  
 29                   to be effective.



1           §2356. Revocation or amendment of the gift before death

2                   A. ~~If the document of gift has been delivered to a named donee, it may be~~  
3 ~~revoked by either:~~ A person authorized to make an anatomical gift in accordance  
4 with this Part may amend or revoke the gift by a signed record or a later-executed  
5 document of gift that amends or revokes a previous gift or portion of a gift either  
6 expressly or by inconsistency.

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

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

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

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

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

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

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

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



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

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

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

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

17          §2357. Rights and duties at ~~death~~ of procurement organizations; others

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

29          ~~B. The time of death shall be determined by the physician who attends the~~  
30          ~~donor at his death, or, if none, the physician who certifies the death. The physician~~

1 shall not be a participant in the procedures for removing the part or transplanting it.  
2 A procurement organization shall be allowed reasonable access to information in the  
3 records of the office of motor vehicles to ascertain whether a person at or near death  
4 is a donor.

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

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

24 E. Unless otherwise prohibited by law, an examination in accordance with  
25 this Section may include an examination of all medical and dental records of the  
26 donor or prospective donor.

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

1           G. Upon referral by a hospital in accordance with Subsection A of this  
 2           Section, a procurement organization shall make a reasonable search for any person  
 3           listed in R.S. 17:2354.2 having priority to make an anatomical gift on behalf of a  
 4           person. If a procurement organization receives information that an anatomical gift  
 5           was made, amended, or revoked, it shall promptly advise the person of all relevant  
 6           information.

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

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

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

20          §2358. Uniformity of ~~interpretation~~ application and construction

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

25          §2358.1. Relation to electronic signatures in global and national commerce

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

1           Section 3. R.S. 17:2354(F) and (G), 2354.4(C) through (K), and 2355.1(D) and (E)  
2 are hereby repealed in their entirety.

3           Section 4. The provisions of this Act shall become effective on July 1, 2010; if  
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
5 effective on July 1, 2010, or on the day following such approval by the legislature,  
6 whichever is later.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_