

# Bill as Introduced

HB 1430 - AS INTRODUCED

2010 SESSION

10-2594  
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HOUSE BILL

**1430**

AN ACT relative to the uniform anatomical gift act.

SPONSORS: Rep. Foose, Merr 1

COMMITTEE: Health, Human Services and Elderly Affairs

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ANALYSIS

This bill adopts the uniform anatomical gift act.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



1 X. "Eye bank" means a person that is licensed, accredited, or regulated under federal or  
2 state law to engage in the recovery, screening, testing, processing, storage, or distribution of human  
3 eyes or portions of human eyes.

4 XI. "Guardian" means a person appointed by a court to make decisions regarding the  
5 support, care, education, health, or welfare of an individual. The term does not include a guardian  
6 ad litem.

7 XII. "Hospital" means a facility licensed as a hospital under the law of any state or a facility  
8 operated as a hospital by the United States, a state, or a subdivision of a state.

9 XIII. "Identification card" means an identification card issued by the division of motor  
10 vehicles.

11 XIV. "Know" means to have actual knowledge.

12 XV. "Minor" means an individual who is under 18 years of age.

13 XVI. "Organ procurement organization" means a person designated by the Secretary of the  
14 United States Department of Health and Human Services as an organ procurement organization.

15 XVII. "Parent" means a parent whose parental rights have not been terminated.

16 XVIII. "Part" means an organ, an eye, or tissue of a human being. The term does not include  
17 the whole body.

18 XIX. "Physician" means an individual authorized to practice medicine or osteopathy under  
19 the law of any state.

20 XX. "Procurement organization" means an eye bank, organ procurement organization, or  
21 tissue bank.

22 XXI. "Prospective donor" means an individual who is dead or near death and has been  
23 determined by a procurement organization to have a part that could be medically suitable for  
24 transplantation, therapy, research, or education. The term does not include an individual who has  
25 made a refusal.

26 XXII. "Reasonably available" means able to be contacted by a procurement organization  
27 without undue effort and willing and able to act in a timely manner consistent with existing medical  
28 criteria necessary for the making of an anatomical gift.

29 XXIII. "Recipient" means an individual into whose body a decedent's part has been or is  
30 intended to be transplanted.

31 XXIV. "Record" means information that is inscribed on a tangible medium or that is stored  
32 in an electronic or other medium and is retrievable in perceivable form.

33 XXV. "Refusal" means a record created under RSA 291-A:7 that expressly states an intent to  
34 bar other persons from making an anatomical gift of an individual's body or part.

35 XXVI. "Sign" means, with the present intent to authenticate or adopt a record:

36 (a) To execute or adopt a tangible symbol; or

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

3 XXVII. "Technician" means an individual determined to be qualified to remove or process  
4 parts by an appropriate organization that is licensed, accredited, or regulated under federal or state  
5 law. The term includes an enucleator.

6 XXVIII. "Tissue" means a portion of the human body other than an organ or an eye. The  
7 term does not include blood unless the blood is donated for the purpose of research or education.

8 XXIX. "Tissue bank" means a person that is licensed, accredited, or regulated under federal  
9 or state law to engage in the recovery, screening, testing, processing, storage, or distribution of  
10 tissue.

11 XXX. "Transplant hospital" means a hospital that furnishes organ transplants and other  
12 medical and surgical specialty services required for the care of transplant patients.

13 291-A:3 Applicability. This chapter applies to an anatomical gift or amendment to, revocation  
14 of, or refusal to make an anatomical gift, whenever made.

15 291-A:4 Who May Make Anatomical Gift Before Donor's Death. Subject to RSA 291-A:8, an  
16 anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of  
17 transplantation, therapy, research, or education in the manner provided in RSA 291-A:5 by:

18 I. The donor, if the donor is an adult or if the donor is a minor and is:

19 (a) Emancipated; or

20 (b) Authorized under state law to apply for a driver's license or identification card;

21 II. An agent of the donor, unless the power of attorney for health care or other record  
22 prohibits the agent from making an anatomical gift;

23 III. A parent of the donor, if the donor is an unemancipated minor; or

24 IV. The donor's guardian.

25 291-A:5 Manner of Making Anatomical Gift Before Donor's Death.

26 I. A donor may make an anatomical gift:

27 (a) By authorizing a statement or symbol indicating that the donor has made an  
28 anatomical gift to be imprinted on the donor's driver's license or identification card;

29 (b) In a will;

30 (c) During a terminal illness or injury of the donor, by any form of communication  
31 addressed to at least 2 adults, at least one of whom is a disinterested witness; or

32 (d) As provided in paragraph II.

33 II. A donor or other person authorized to make an anatomical gift under RSA 291-A:4 may  
34 make a gift by a donor card or other record signed by the donor or other person making the gift or by  
35 authorizing that a statement or symbol indicating that the donor has made an anatomical gift be  
36 included on a donor registry. If the donor or other person is physically unable to sign a record, the  
37 record may be signed by another individual at the direction of the donor or other person and shall:

1 (a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness,  
2 who have signed at the request of the donor or the other person; and

3 (b) State that it has been signed and witnessed as provided in subparagraph (a).

4 III. Revocation, suspension, expiration, or cancellation of a driver's license or identification  
5 card upon which an anatomical gift is indicated does not invalidate the gift.

6 IV. An anatomical gift made by will takes effect upon the donor's death whether or not the  
7 will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

8 291-A:6 Amending or Revoking Anatomical Gift Before Donor's Death.

9 I. Subject to RSA 291-A:8, a donor or other person authorized to make an anatomical gift  
10 under RSA 291-A:4 may amend or revoke an anatomical gift by:

11 (a) A record signed by:

12 (1) The donor;

13 (2) The other person; or

14 (3) Subject to paragraph II, another individual acting at the direction of the donor or  
15 the other person if the donor or other person is physically unable to sign; or

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

18 II. A record signed pursuant to subparagraph I(a)(3) shall:

19 (a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness,  
20 who have signed at the request of the donor or the other person; and

21 (b) State that it has been signed and witnessed as provided in paragraph I.

22 III. Subject to RSA 291-A:8, a donor or other person authorized to make an anatomical gift  
23 under RSA 291-A:4 may revoke an anatomical gift by the destruction or cancellation of the document  
24 of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

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

28 V. A donor who makes an anatomical gift in a will may amend or revoke the gift in the  
29 manner provided for amendment or revocation of wills or as provided in paragraph I.

30 291-A:7 Refusal to Make Anatomical Gift; Effect of Refusal.

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

32 (a) A record signed by:

33 (1) The individual; or

34 (2) Subject to paragraph II, another individual acting at the direction of the  
35 individual if the individual is physically unable to sign;

36 (b) The individual's will, whether or not the will is admitted to probate or invalidated  
37 after the individual's death; or

1 (c) Any form of communication made by the individual during the individual's terminal  
2 illness or injury addressed to at least 2 adults, at least one of whom is a disinterested witness.

3 II. A record signed pursuant to subparagraph I(a)(2) shall:

4 (a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness,  
5 who have signed at the request of the individual; and

6 (b) State that it has been signed and witnessed as provided in subparagraph (a).

7 III. An individual who has made a refusal may amend or revoke the refusal:

8 (a) In the manner provided in paragraph I for making a refusal;

9 (b) By subsequently making an anatomical gift pursuant to RSA 291-A:5 that is  
10 inconsistent with the refusal; or

11 (c) By destroying or canceling the record evidencing the refusal, or the portion of the  
12 record used to make the refusal, with the intent to revoke the refusal.

13 IV. Except as otherwise provided in RSA 291-A:8, VIII, in the absence of an express,  
14 contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to  
15 make an anatomical gift of the individual's body or part bars all other persons from making an  
16 anatomical gift of the individual's body or part.

17 291-A:8 Preclusive Effect of Anatomical Gift, Amendment, or Revocation.

18 I. Except as otherwise provided in paragraph VII and subject to paragraph VI, in the  
19 absence of an express, contrary indication by the donor, a person other than the donor is barred from  
20 making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an  
21 anatomical gift of the donor's body or part under RSA 291-A:5 or an amendment to an anatomical  
22 gift of the donor's body or part under RSA 291-A:6.

23 II. A donor's revocation of an anatomical gift of the donor's body or part under RSA 291-A:6  
24 is not a refusal and does not bar another person specified in RSA 291-A:4 or RSA 291-A:9 from  
25 making an anatomical gift of the donor's body or part under RSA 291-A:5 or RSA 291-A:10.

26 III. If a person other than the donor makes an unrevoked anatomical gift of the donor's body  
27 or part under RSA 291-A:5 or an amendment to an anatomical gift of the donor's body or part under  
28 RSA 291-A:6, another person may not make, amend, or revoke the gift of the donor's body or part  
29 under RSA 291-A:10.

30 IV. A revocation of an anatomical gift of a donor's body or part under RSA 291-A:6 by a  
31 person other than the donor shall not bar another person from making an anatomical gift of the body  
32 or part under RSA 291-A:5 or RSA 291-A:10.

33 V. In the absence of an express, contrary indication by the donor or other person authorized  
34 to make an anatomical gift under RSA 291-A:4, an anatomical gift of a part is neither a refusal to  
35 give another part nor a limitation on the making of an anatomical gift of another part at a later time  
36 by the donor or another person.

1 VI. In the absence of an express, contrary indication by the donor or other person authorized  
2 to make an anatomical gift under RSA 291-A:4, an anatomical gift of a part for one or more of the  
3 purposes set forth in RSA 291-A:4 is not a limitation on the making of an anatomical gift of the part  
4 for any of the other purposes by the donor or any other person under RSA 291-A:5 or RSA 291-A:10.

5 VII. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably  
6 available may revoke or amend an anatomical gift of the donor's body or part.

7 VIII. If an unemancipated minor who signed a refusal dies, a parent of the minor who is  
8 reasonably available may revoke the minor's refusal.

9 291-A:9 Who May Make Anatomical Gift of Decedent's Body or Part.

10 I. Subject to paragraphs II and III and unless barred by RSA 291-A:7 or RSA 291-A:8, an  
11 anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or  
12 education may be made by any member of the following classes of persons who is reasonably  
13 available, in the order of priority listed:

14 (a) An agent of the decedent at the time of death who could have made an anatomical  
15 gift under RSA 291-A:4, II immediately before the decedent's death;

16 (b) The spouse of the decedent;

17 (c) Adult children of the decedent;

18 (d) Parents of the decedent;

19 (e) Adult siblings of the decedent;

20 (f) Adult grandchildren of the decedent;

21 (g) Grandparents of the decedent;

22 (h) An adult who exhibited special care and concern for the decedent;

23 (i) The persons who were acting as the guardians of the person of the decedent at the  
24 time of death; and

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

26 II. If there is more than one member of a class listed in subparagraphs I(a), (c), (d), (e), (f),  
27 (g), or (i) entitled to make an anatomical gift, an anatomical gift may be made by a member of the  
28 class unless that member or a person to which the gift may pass under RSA 291-A:11 knows of an  
29 objection by another member of the class. If an objection is known, the gift may be made only by a  
30 majority of the members of the class who are reasonably available.

31 III. A person may not make an anatomical gift if, at the time of the decedent's death, a  
32 person in a prior class under paragraph I is reasonably available to make or to object to the making  
33 of an anatomical gift.

34 291-A:10 Manner of Making, Amending, or Revoking Anatomical Gift of Decedent's Body or  
35 Part.

36 I. A person authorized to make an anatomical gift under RSA 291-A:9 may make an  
37 anatomical gift by a document of gift signed by the person making the gift or by that person's oral



1 communication that is electronically recorded or is contemporaneously reduced to a record and  
2 signed by the individual receiving the oral communication.

3 II. Subject to paragraph III, an anatomical gift by a person authorized under RSA 291-A:9  
4 may be amended or revoked orally or in a record by any member of a prior class who is reasonably  
5 available. If more than one member of the prior class is reasonably available, the gift made by a  
6 person authorized under RSA 291-A:9 may be:

7 (a) Amended only if a majority of the reasonably available members agree to the  
8 amending of the gift; or

9 (b) Revoked only if a majority of the reasonably available members agree to the revoking  
10 of the gift or if they are equally divided as to whether to revoke the gift.

11 III. A revocation under paragraph II is effective only if, before an incision has been made to  
12 remove a part from the donor's body or before invasive procedures have begun to prepare the  
13 recipient, the procurement organization, transplant hospital, or physician or technician knows of the  
14 revocation.

15 291-A:11 Persons that May Receive an Anatomical Gift; Purpose of Anatomical Gift.

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

17 (a) A hospital; accredited medical school, dental school, college, or university; organ  
18 procurement organization; or other appropriate person, for research or education;

19 (b) Subject to paragraph II, an individual designated by the person making the  
20 anatomical gift if the individual is the recipient of the part; or

21 (c) An eye bank or tissue bank.

22 II. If an anatomical gift to an individual under subparagraph I(b) cannot be transplanted  
23 into the individual, the part passes in accordance with paragraph VII in the absence of an express,  
24 contrary indication by the person making the anatomical gift.

25 III. If an anatomical gift of one or more specific parts or of all parts is made in a document of  
26 gift that does not name a person described in paragraph I but identifies the purpose for which an  
27 anatomical gift may be used, the following rules apply:

28 (a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the  
29 gift passes to the appropriate eye bank.

30 (b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the  
31 gift passes to the appropriate tissue bank.

32 (c) If the part is an organ and the gift is for the purpose of transplantation or therapy,  
33 the gift passes to the appropriate organ procurement organization as custodian of the organ.

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

36 IV. For the purpose of paragraph III, if there is more than one purpose of an anatomical gift  
37 set forth in the document of gift but the purposes are not set forth in any priority, the gift must be

1 used for transplantation or therapy, if suitable for those purposes. If the gift cannot be used for  
2 transplantation or therapy, the gift may be used for research or education.

3 V. If an anatomical gift of one or more specific parts is made in a document of gift that does  
4 not name a person described in paragraph I and does not identify the purpose of the gift, the gift  
5 passes in accordance with paragraph VII and the parts must be used for transplantation or therapy  
6 if suitable and if not suitable for those purposes, may be used for research or education.

7 VI. If a document of gift specifies only a general intent to make an anatomical gift by words  
8 such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the  
9 gift passes in accordance with paragraph VII and the parts shall be used for transplantation or  
10 therapy if suitable and if not suitable for those purposes, may be used for research or education.

11 VII. For purposes of paragraphs II, III, and VI the following rules shall apply:

12 (a) If the part is an eye, the gift passes to the appropriate eye bank.

13 (b) If the part is tissue, the gift passes to the appropriate tissue bank.

14 (c) If the part is an organ, the gift passes to the appropriate organ procurement  
15 organization as custodian of the organ.

16 VIII. An anatomical gift of an organ for transplantation or therapy, other than an  
17 anatomical gift under subparagraph I(b), passes to the organ procurement organization as custodian  
18 of the organ.

19 IX. If an anatomical gift does not pass pursuant to paragraphs I-VIII or the decedent's body  
20 or part is not used for transplantation, therapy, research, or education, custody of the body or part  
21 passes to the person under obligation to dispose of the body or part.

22 X. A person may not accept an anatomical gift if the person knows that the gift was not  
23 effectively made under RSA 291-A:5 or RSA 291-A:10 or if the person knows that the decedent made  
24 a refusal under RSA 291-A:7 that was not revoked. For purposes of the paragraph, if a person knows  
25 that an anatomical gift was made on a document of gift, the person is deemed to know of any  
26 amendment or revocation of the gift or any refusal to make an anatomical gift on the same document  
27 of gift.

28 XI. Except as otherwise provided in subparagraph I(b), nothing in this chapter shall affect  
29 the allocation of organs for transplantation or therapy.

30 291-A:12 Search and Notification.

31 I. The following persons shall make a reasonable search of an individual who the person  
32 reasonably believes is dead or near death for a document of gift or other information identifying the  
33 individual as a donor or as an individual who made a refusal:

34 (a) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding  
35 the individual; and

36 (b) If no other source of the information is immediately available, a hospital, as soon as  
37 practical after the individual's arrival at the hospital.

1           II. If a document of gift or a refusal to make an anatomical gift is located by the search  
2 required by subparagraph I(a) and the individual or deceased individual to whom it relates is taken  
3 to a hospital, the person responsible for conducting the search shall send the document of gift or  
4 refusal to the hospital.

5           III. A person shall not be subject to criminal or civil liability for failing to discharge the  
6 duties imposed by this section but may be subject to administrative sanctions.

7           291-A:13 Delivery of Document of Gift Not Required; Right to Examine.

8           I. A document of gift need not be delivered during the donor's lifetime to be effective.

9           II. Upon or after an individual's death, a person in possession of a document of gift or a  
10 refusal to make an anatomical gift with respect to the individual shall allow examination and  
11 copying of the document of gift or refusal by a person authorized to make or object to the making of  
12 an anatomical gift with respect to the individual or by a person to which the gift could pass under  
13 RSA 291-A:11.

14           291-A:14 Rights and Duties of Procurement Organization and Others.

15           I. When a hospital refers an individual at or near death to a procurement organization, the  
16 organization shall make a reasonable search of the records of the New Hampshire donor registry and  
17 any other donor registry that it knows exists for the geographical area in which the individual  
18 resides to ascertain whether the individual has made an anatomical gift.

19           II. A procurement organization shall be allowed reasonable access to information in the  
20 records of the department of motor vehicles through the New Hampshire donor registry pursuant to  
21 RSA 291-A:20 to ascertain whether an individual at or near death is a donor.

22           III. When a hospital refers an individual at or near death to a procurement organization, the  
23 organization may conduct any reasonable examination necessary to assess the medical suitability of  
24 a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or  
25 education from a donor or a prospective donor. During the examination period, measures necessary  
26 to maintain the potential medical suitability of the part may not be withdrawn unless the hospital or  
27 procurement organization knows that the individual expressed a contrary intent.

28           IV. Unless prohibited by law other than this chapter, at any time after a donor's death, the  
29 person to which a part passes under RSA 291-A:11 may conduct any reasonable examination  
30 necessary to assess the medical suitability of the body or part for its intended purpose.

31           V. Unless prohibited by law other than this chapter, an examination under paragraphs III  
32 or IV may include an examination of all medical and dental records of the donor or prospective  
33 donor.

34           VI. Upon the death of a minor who was a donor or had signed a refusal, unless a  
35 procurement organization knows the minor is emancipated, the procurement organization shall  
36 conduct a reasonable search for the parents of the minor and provide the parents with an  
37 opportunity to revoke or amend the anatomical gift or revoke the refusal.

1 VII. Upon referral by a hospital under paragraph I, a procurement organization shall make  
2 a reasonable search for any person listed in RSA 291-A:9 having priority to make an anatomical gift  
3 on behalf of a prospective donor. If a procurement organization receives information that an  
4 anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the  
5 other person of all relevant information.

6 VIII. Subject to RSA 291-A:11 and RSA 291-A:22, the rights of the person to which a part  
7 passes under RSA 291-A:11 are superior to the rights of all others with respect to the part. The  
8 person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the  
9 document of gift and this act, a person that accepts an anatomical gift of an entire body may allow  
10 embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the  
11 person to which the part passes under RSA 291-A:11, upon the death of the donor and before  
12 embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

13 IX. Neither the physician who attends the decedent at death nor the physician who  
14 determines the time of the decedent's death may participate in the procedures for removing or  
15 transplanting a part from the decedent.

16 X. A physician or technician may remove a donated part from the body of a donor that the  
17 physician or technician is qualified to remove.

18 291-A:15 Coordination of Procurement and Use. Each hospital in this state shall enter into  
19 agreements or affiliations with procurement organizations for coordination of procurement and use  
20 of anatomical gifts.

21 291-A:16 Sale or Purchase of Parts Prohibited.

22 I. Except as otherwise provided in paragraph II, a person that for valuable consideration,  
23 knowingly purchases or sells a part for transplantation or therapy if removal of a part from an  
24 individual is intended to occur after the individual's death commits a felony and, notwithstanding  
25 RSA 651:2, upon conviction shall be subject to a fine not exceeding \$50,000 or imprisonment not  
26 exceeding 5 years, or both.

27 II. A person may charge a reasonable amount for the removal, processing, preservation,  
28 quality control, storage, transportation, implantation, or disposal of a part.

29 291-A:17 Other Prohibited Acts. A person that, in order to obtain a financial gain, intentionally  
30 falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a  
31 document of gift, or a refusal commits a felony and upon conviction shall be subject to a fine not  
32 exceeding \$50,000 or imprisonment not exceeding 5 years, or both.

33 291-A:18 Immunity.

34 I. A person that acts in accordance with this chapter or with the applicable anatomical gift  
35 law of another state, or attempts in good faith to do so, shall not be liable for the act in a civil action,  
36 criminal prosecution, or administrative proceeding. Acting consistent with a document of gift shall  
37 be prima facie evidence of good faith.

1           II. Neither the person making an anatomical gift nor the donor's estate shall be liable for  
2 any injury or damage that results from the making or use of the gift.

3           III. In determining whether an anatomical gift has been made, amended, or revoked under  
4 this chapter, a person may rely upon representations of an individual listed in RSA 291-A:9, I  
5 relating to the individual's relationship to the donor or prospective donor unless the person knows  
6 that the representation is untrue.

7           291-A:19 Law Governing Validity; Choice of Law as to Execution of Document of Gift;  
8 Presumption of Validity.

9           I. A document of gift is valid if executed in accordance with:

10           (a) This chapter;

11           (b) The laws of the state or country where it was executed; or

12           (c) The laws of the state or country where the person making the anatomical gift was  
13 domiciled, has a place of residence, or was a national at the time the document of gift was executed.

14           II. If a document of gift is valid under this section, the law of this state shall govern the  
15 interpretation of the document of gift.

16           III. A person may presume that a document of gift or amendment of an anatomical gift is  
17 valid unless that person knows that it was not validly executed or was revoked.

18           291-A:20 Donor Registry.

19           I. A donor registry shall:

20           (a) Provide a database that allows an individual who has made an anatomical gift to be  
21 included in the donor registry;

22           (b) Be accessible to a procurement organization to allow it to obtain relevant information  
23 on the donor registry to determine, at or near death of the donor or a prospective donor, whether the  
24 donor or prospective donor has made an anatomical gift; and

25           (c) Be accessible for purposes of subparagraphs (a) and (b) 7 days a week on a 24-hour  
26 basis.

27           II. Personally identifiable information on a donor registry about a donor or prospective donor  
28 may not be used or disclosed without the express consent of the donor, prospective donor, or person  
29 that made the anatomical gift for any purpose other than to determine, at or near death of the donor  
30 or prospective donor, whether the donor or prospective donor has made, amended, or revoked an  
31 anatomical gift.

32           III. This section shall not prohibit any person from creating or maintaining a donor registry  
33 that is not established by or under contract with the state. Any such registry shall comply with  
34 paragraphs I and II.

35           291-A:21 Cooperation Between Medical Examiner and Procurement Organization.

1 I. The chief medical examiner shall cooperate with procurement organizations to maximize  
2 the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or  
3 education.

4 II. If a medical examiner receives notice from a procurement organization that an  
5 anatomical gift might be available or was made with respect to a decedent whose body is under the  
6 jurisdiction of the medical examiner and a post-mortem examination is going to be performed, unless  
7 the medical examiner denies recovery in accordance with RSA 291-A:22, the medical examiner or  
8 designee shall conduct a post-mortem examination of the body or the part in a manner and within a  
9 period compatible with its preservation for the purposes of the gift.

10 III. A part may not be removed from the body of a decedent under the jurisdiction of a  
11 medical examiner for transplantation, therapy, research, or education unless the part is the subject  
12 of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner may not  
13 be delivered to a person for research or education unless the body is the subject of an anatomical gift.  
14 This paragraph does not preclude a medical examiner from performing the medicolegal investigation  
15 upon the body or parts of a decedent under the jurisdiction of the medical examiner.

16 291-A:22 Facilitation of Anatomical Gift From Decedent Whose Body is Under Jurisdiction of  
17 Medical Examiner.

18 I. Upon request of a procurement organization, a medical examiner shall release to the  
19 procurement organization the name, contact information, and available medical and social history of  
20 a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's body or  
21 part is medically suitable for transplantation, therapy, research, or education, the medical examiner  
22 shall release post-mortem examination results to the procurement organization. The procurement  
23 organization may make a subsequent disclosure of the post-mortem examination results or other  
24 information received from the medical examiner only if relevant to transplantation or therapy.

25 II. The medical examiner may conduct a medicolegal examination by reviewing all medical  
26 records, laboratory test results, x-rays, other diagnostic results, and other information that any  
27 person possesses about a donor or prospective donor whose body is under the jurisdiction of the  
28 medical examiner which the medical examiner determines may be relevant to the investigation.

29 III. A person that has any information requested by a medical examiner pursuant to  
30 paragraph II shall provide that information as expeditiously as possible to allow the medical  
31 examiner to conduct the medicolegal investigation within a period compatible with the preservation  
32 of parts for the purpose of transplantation, therapy, research, or education.

33 IV. If an anatomical gift has been or might be made of a part of a decedent whose body is  
34 under the jurisdiction of the medical examiner and a post-mortem examination shall not be required,  
35 or the medical examiner determines that a post-mortem examination is required but that the  
36 recovery of the part that is the subject of an anatomical gift will not interfere with the examination,

1 the medical examiner and procurement organization shall cooperate in the timely removal of the  
2 part from the decedent for the purpose of transplantation, therapy, research, or education.

3 V. If an anatomical gift of a part from the decedent under the jurisdiction of the medical  
4 examiner has been or might be made, but the medical examiner initially believes that the recovery of  
5 the part could interfere with the post-mortem investigation into the decedent's cause or manner of  
6 death, the medical examiner shall consult with the procurement organization or physician or  
7 technician designated by the procurement organization about the proposed recovery. After  
8 consultation, the medical examiner may allow the recovery.

9 VI. Following the consultation under paragraph V, in the absence of mutually agreed-upon  
10 protocols to resolve conflict between the medical examiner and the procurement organization, if the  
11 medical examiner intends to deny recovery, the medical examiner or designee, at the request of the  
12 procurement organization, shall attend the removal procedure for the part before making a final  
13 determination not to allow the procurement organization to recover the part. During the removal  
14 procedure, the medical examiner or designee may allow recovery by the procurement organization to  
15 proceed, or, if the medical examiner or designee reasonably believes that the part may be involved in  
16 determining the decedent's cause or manner of death, deny recovery by the procurement  
17 organization.

18 VII. If the medical examiner or designee denies recovery under paragraph VI, the medical  
19 examiner or designee shall:

- 20 (a) Explain in a record the specific reasons for not allowing recovery of the part;  
21 (b) Include the specific reasons in the records of the medical examiner; and  
22 (c) Provide a record with the specific reasons to the procurement organization.

23 VIII. If the medical examiner or designee allows recovery of a part under paragraph IV, V,  
24 or VI, the procurement organization, upon request, shall cause the physician or technician who  
25 removes the part to provide the medical examiner with a record describing the condition of the part,  
26 a biopsy, a photograph, and any other information and observations that would assist in the post-  
27 mortem examination.

28 291-A:23 Honoring an Individual's Decision to Donate. A person's decision to make a donation  
29 of that person's own body, organ, or tissue after death shall be honored. In the absence of a  
30 revocation or amendment, health care providers and procurement organizations shall act in  
31 accordance with the donor's decision and may take appropriate actions to effect the anatomical gift.

32 291-A:24 Uniformity of Application and Construction. In applying and construing this uniform  
33 act, consideration must be given to the need to promote uniformity of the law with respect to its  
34 subject matter among states that enact it.

35 291-A:25 Relation to Electronic Signatures in Global and National Commerce Act. This act  
36 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15  
37 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(a) of that act, 15

1 U.S.C. section 7001, or authorize electronic delivery of any of the notices described in section 103(b)  
2 of that act, 15 U.S.C. section 7003(b).

3 2 Eye Procurement; Cross Reference Charge. Amend RSA 325:31-a to read as follows:

4 325:31-a Eye Procurement Technician Qualification. No person shall perform eye tissue  
5 removal or processing pursuant to ~~[RSA 291-A:3, IV]~~ **RSA 291-A:11** unless such person has  
6 successfully completed a course of training acceptable to a procurement organization as defined in  
7 ~~[RSA 291-A:2, X]~~ **RSA 291-A:2, XX**. The procurement organization shall have the power to establish  
8 qualifications and terms for the successful completion of the course of training.

9 3 Effective Date. This act shall take effect 60 days after its passage.



CHAPTER 111  
HB 1430 - FINAL VERSION

2010 SESSION

10-2594  
08/05

HOUSE BILL           **1430**  
AN ACT                relative to the uniform anatomical gift act.  
SPONSORS:           Rep. Foose, Merr 1  
COMMITTEE:          Health, Human Services and Elderly Affairs

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ANALYSIS

This bill adopts the uniform anatomical gift act.

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Explanation:        Matter added to current law appears in ***bold italics***.  
                          Matter removed from current law appears [~~in brackets and struckthrough.~~]  
                          Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



**CHAPTER 111**  
**HB 1430 - FINAL VERSION**  
**- Page 2 -**

1           X. "Eye bank" means a person that is licensed, accredited, or regulated under federal or  
2 state law to engage in the recovery, screening, testing, processing, storage, or distribution of human  
3 eyes or portions of human eyes.

4           XI. "Guardian" means a person appointed by a court to make decisions regarding the  
5 support, care, education, health, or welfare of an individual. The term does not include a guardian  
6 ad litem.

7           XII. "Hospital" means a facility licensed as a hospital under the law of any state or a facility  
8 operated as a hospital by the United States, a state, or a subdivision of a state.

9           XIII. "Identification card" means an identification card issued by the division of motor  
10 vehicles.

11           XIV. "Know" means to have actual knowledge.

12           XV. "Minor" means an individual who is under 18 years of age.

13           XVI. "Organ procurement organization" means a person designated by the Secretary of the  
14 United States Department of Health and Human Services as an organ procurement organization.

15           XVII. "Parent" means a parent whose parental rights have not been terminated.

16           XVIII. "Part" means an organ, an eye, or tissue of a human being. The term does not include  
17 the whole body.

18           XIX. "Physician" means an individual authorized to practice medicine or osteopathy under  
19 the law of any state.

20           XX. "Procurement organization" means an eye bank, organ procurement organization, or  
21 tissue bank.

22           XXI. "Prospective donor" means an individual who is dead or near death and has been  
23 determined by a procurement organization to have a part that could be medically suitable for  
24 transplantation, therapy, research, or education. The term does not include an individual who has  
25 made a refusal.

26           XXII. "Reasonably available" means able to be contacted by a procurement organization  
27 without undue effort and willing and able to act in a timely manner consistent with existing medical  
28 criteria necessary for the making of an anatomical gift.

29           XXIII. "Recipient" means an individual into whose body a decedent's part has been or is  
30 intended to be transplanted.

31           XXIV. "Record" means information that is inscribed on a tangible medium or that is stored  
32 in an electronic or other medium and is retrievable in perceivable form.

33           XXV. "Refusal" means a record created under RSA 291-A:7 that expressly states an intent to  
34 bar other persons from making an anatomical gift of an individual's body or part.

35           XXVI. "Sign" means, with the present intent to authenticate or adopt a record:

36           (a) To execute or adopt a tangible symbol; or

**CHAPTER 111**  
**HB 1430 – FINAL VERSION**  
**- Page 3 -**

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

3 XXVII. "Technician" means an individual determined to be qualified to remove or process  
4 parts by an appropriate organization that is licensed, accredited, or regulated under federal or state  
5 law. The term includes an enucleator.

6 XXVIII. "Tissue" means a portion of the human body other than an organ or an eye. The  
7 term does not include blood unless the blood is donated for the purpose of research or education.

8 XXIX. "Tissue bank" means a person that is licensed, accredited, or regulated under federal  
9 or state law to engage in the recovery, screening, testing, processing, storage, or distribution of  
10 tissue.

11 XXX. "Transplant hospital" means a hospital that furnishes organ transplants and other  
12 medical and surgical specialty services required for the care of transplant patients.

13 291-A:3 Applicability. This chapter applies to an anatomical gift or amendment to, revocation  
14 of, or refusal to make an anatomical gift, whenever made.

15 291-A:4 Who May Make Anatomical Gift Before Donor's Death. Subject to RSA 291-A:8, an  
16 anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of  
17 transplantation, therapy, research, or education in the manner provided in RSA 291-A:5 by:

18 I. The donor, if the donor is an adult or if the donor is a minor and is:

19 (a) Emancipated; or

20 (b) Authorized under state law to apply for a driver's license or identification card;

21 II. An agent of the donor, unless the power of attorney for health care or other record  
22 prohibits the agent from making an anatomical gift;

23 III. A parent of the donor, if the donor is an unemancipated minor; or

24 IV. The donor's guardian.

25 291-A:5 Manner of Making Anatomical Gift Before Donor's Death.

26 I. A donor may make an anatomical gift:

27 (a) By authorizing a statement or symbol indicating that the donor has made an  
28 anatomical gift to be imprinted on the donor's driver's license or identification card;

29 (b) In a will;

30 (c) During a terminal illness or injury of the donor, by any form of communication  
31 addressed to at least 2 adults, at least one of whom is a disinterested witness; or

32 (d) As provided in paragraph II.

33 II. A donor or other person authorized to make an anatomical gift under RSA 291-A:4 may  
34 make a gift by a donor card or other record signed by the donor or other person making the gift or by  
35 authorizing that a statement or symbol indicating that the donor has made an anatomical gift be

**CHAPTER 111**  
**HB 1430 – FINAL VERSION**  
**- Page 4 -**

1 included on a donor registry. If the donor or other person is physically unable to sign a record, the  
2 record may be signed by another individual at the direction of the donor or other person and shall:

3 (a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness,  
4 who have signed at the request of the donor or the other person; and

5 (b) State that it has been signed and witnessed as provided in subparagraph (a).

6 III. Revocation, suspension, expiration, or cancellation of a driver's license or identification  
7 card upon which an anatomical gift is indicated does not invalidate the gift.

8 IV. An anatomical gift made by will takes effect upon the donor's death whether or not the  
9 will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

10 **291-A:6 Amending or Revoking Anatomical Gift Before Donor's Death.**

11 I. Subject to RSA 291-A:8, a donor or other person authorized to make an anatomical gift  
12 under RSA 291-A:4 may amend or revoke an anatomical gift by:

13 (a) A record signed by:

14 (1) The donor;

15 (2) The other person; or

16 (3) Subject to paragraph II, another individual acting at the direction of the donor or  
17 the other person if the donor or other person is physically unable to sign; or

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

20 II. A record signed pursuant to subparagraph I(a)(3) shall:

21 (a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness,  
22 who have signed at the request of the donor or the other person; and

23 (b) State that it has been signed and witnessed as provided in paragraph I.

24 III. Subject to RSA 291-A:8, a donor or other person authorized to make an anatomical gift  
25 under RSA 291-A:4 may revoke an anatomical gift by the destruction or cancellation of the document  
26 of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

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

30 V. A donor who makes an anatomical gift in a will may amend or revoke the gift in the  
31 manner provided for amendment or revocation of wills or as provided in paragraph I.

32 **291-A:7 Refusal to Make Anatomical Gift; Effect of Refusal.**

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

34 (a) A record signed by:

35 (1) The individual; or

**CHAPTER 111**  
**HB 1430 - FINAL VERSION**  
**- Page 5 -**

1           (2) Subject to paragraph II, another individual acting at the direction of the  
2 individual if the individual is physically unable to sign;

3           (b) The individual's will, whether or not the will is admitted to probate or invalidated  
4 after the individual's death; or

5           (c) Any form of communication made by the individual during the individual's terminal  
6 illness or injury addressed to at least 2 adults, at least one of whom is a disinterested witness.

7           II. A record signed pursuant to subparagraph I(a)(2) shall:

8           (a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness,  
9 who have signed at the request of the individual; and

10           (b) State that it has been signed and witnessed as provided in subparagraph (a).

11           III. An individual who has made a refusal may amend or revoke the refusal:

12           (a) In the manner provided in paragraph I for making a refusal;

13           (b) By subsequently making an anatomical gift pursuant to RSA 291-A:5 that is  
14 inconsistent with the refusal; or

15           (c) By destroying or canceling the record evidencing the refusal, or the portion of the  
16 record used to make the refusal, with the intent to revoke the refusal.

17           IV. Except as otherwise provided in RSA 291-A:8, VIII, in the absence of an express,  
18 contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to  
19 make an anatomical gift of the individual's body or part bars all other persons from making an  
20 anatomical gift of the individual's body or part.

21           291-A:8 Preclusive Effect of Anatomical Gift, Amendment, or Revocation.

22           I. Except as otherwise provided in paragraph VII and subject to paragraph VI, in the  
23 absence of an express, contrary indication by the donor, a person other than the donor is barred from  
24 making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an  
25 anatomical gift of the donor's body or part under RSA 291-A:5 or an amendment to an anatomical  
26 gift of the donor's body or part under RSA 291-A:6.

27           II. A donor's revocation of an anatomical gift of the donor's body or part under RSA 291-A:6  
28 is not a refusal and does not bar another person specified in RSA 291-A:4 or RSA 291-A:9 from  
29 making an anatomical gift of the donor's body or part under RSA 291-A:5 or RSA 291-A:10.

30           III. If a person other than the donor makes an unrevoked anatomical gift of the donor's body  
31 or part under RSA 291-A:5 or an amendment to an anatomical gift of the donor's body or part under  
32 RSA 291-A:6, another person may not make, amend, or revoke the gift of the donor's body or part  
33 under RSA 291-A:10.

34           IV. A revocation of an anatomical gift of a donor's body or part under RSA 291-A:6 by a  
35 person other than the donor shall not bar another person from making an anatomical gift of the body  
36 or part under RSA 291-A:5 or RSA 291-A:10.

**CHAPTER 111**  
**HB 1430 - FINAL VERSION**  
**- Page 6 -**

1           V. In the absence of an express, contrary indication by the donor or other person authorized  
2 to make an anatomical gift under RSA 291-A:4, an anatomical gift of a part is neither a refusal to  
3 give another part nor a limitation on the making of an anatomical gift of another part at a later time  
4 by the donor or another person.

5           VI. In the absence of an express, contrary indication by the donor or other person authorized  
6 to make an anatomical gift under RSA 291-A:4, an anatomical gift of a part for one or more of the  
7 purposes set forth in RSA 291-A:4 is not a limitation on the making of an anatomical gift of the part  
8 for any of the other purposes by the donor or any other person under RSA 291-A:5 or RSA 291-A:10.

9           VII. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably  
10 available may revoke or amend an anatomical gift of the donor's body or part.

11           VIII. If an unemancipated minor who signed a refusal dies, a parent of the minor who is  
12 reasonably available may revoke the minor's refusal.

13           **291-A:9 Who May Make Anatomical Gift of Decedent's Body or Part.**

14           I. Subject to paragraphs II and III and unless barred by RSA 291-A:7 or RSA 291-A:8, an  
15 anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or  
16 education may be made by any member of the following classes of persons who is reasonably  
17 available, in the order of priority listed:

18               (a) An agent of the decedent at the time of death who could have made an anatomical  
19 gift under RSA 291-A:4, II immediately before the decedent's death;

20               (b) The spouse of the decedent;

21               (c) Adult children of the decedent;

22               (d) Parents of the decedent;

23               (e) Adult siblings of the decedent;

24               (f) Adult grandchildren of the decedent;

25               (g) Grandparents of the decedent;

26               (h) An adult who exhibited special care and concern for the decedent;

27               (i) The persons who were acting as the guardians of the person of the decedent at the  
28 time of death; and

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

30           II. If there is more than one member of a class listed in subparagraphs I(a), (c), (d), (e), (f),  
31 (g), or (i) entitled to make an anatomical gift, an anatomical gift may be made by a member of the  
32 class unless that member or a person to which the gift may pass under RSA 291-A:11 knows of an  
33 objection by another member of the class. If an objection is known, the gift may be made only by a  
34 majority of the members of the class who are reasonably available.

**CHAPTER 111**  
**HB 1430 – FINAL VERSION**  
**- Page 7 -**

1           III. A person may not make an anatomical gift if, at the time of the decedent's death, a  
2 person in a prior class under paragraph I is reasonably available to make or to object to the making  
3 of an anatomical gift.

4           291-A:10 Manner of Making, Amending, or Revoking Anatomical Gift of Decedent's Body or  
5 Part.

6           I. A person authorized to make an anatomical gift under RSA 291-A:9 may make an  
7 anatomical gift by a document of gift signed by the person making the gift or by that person's oral  
8 communication that is electronically recorded or is contemporaneously reduced to a record and  
9 signed by the individual receiving the oral communication.

10           II. Subject to paragraph III, an anatomical gift by a person authorized under RSA 291-A:9  
11 may be amended or revoked orally or in a record by any member of a prior class who is reasonably  
12 available. If more than one member of the prior class is reasonably available, the gift made by a  
13 person authorized under RSA 291-A:9 may be:

14           (a) Amended only if a majority of the reasonably available members agree to the  
15 amending of the gift; or

16           (b) Revoked only if a majority of the reasonably available members agree to the revoking  
17 of the gift or if they are equally divided as to whether to revoke the gift.

18           III. A revocation under paragraph II is effective only if, before an incision has been made to  
19 remove a part from the donor's body or before invasive procedures have begun to prepare the  
20 recipient, the procurement organization, transplant hospital, or physician or technician knows of the  
21 revocation.

22           291-A:11 Persons That May Receive an Anatomical Gift; Purpose of Anatomical Gift.

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

24           (a) A hospital; accredited medical school, dental school, college, or university; organ  
25 procurement organization; or other appropriate person, for research or education;

26           (b) Subject to paragraph II, an individual designated by the person making the  
27 anatomical gift if the individual is the recipient of the part; or

28           (c) An eye bank or tissue bank.

29           II. If an anatomical gift to an individual under subparagraph I(b) cannot be transplanted  
30 into the individual, the part passes in accordance with paragraph VII in the absence of an express,  
31 contrary indication by the person making the anatomical gift.

32           III. If an anatomical gift of one or more specific parts or of all parts is made in a document of  
33 gift that does not name a person described in paragraph I but identifies the purpose for which an  
34 anatomical gift may be used, the following rules apply:

35           (a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the  
36 gift passes to the appropriate eye bank.



**CHAPTER 111**  
**HB 1430 - FINAL VERSION**  
**- Page 8 -**

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

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

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

7           IV. For the purpose of paragraph III, if there is more than one purpose of an anatomical gift  
8 set forth in the document of gift but the purposes are not set forth in any priority, the gift must be  
9 used for transplantation or therapy, if suitable for those purposes. If the gift cannot be used for  
10 transplantation or therapy, the gift may be used for research or education.

11           V. If an anatomical gift of one or more specific parts is made in a document of gift that does  
12 not name a person described in paragraph I and does not identify the purpose of the gift, the gift  
13 passes in accordance with paragraph VII and the parts must be used for transplantation or therapy  
14 if suitable and if not suitable for those purposes, may be used for research or education.

15           VI. If a document of gift specifies only a general intent to make an anatomical gift by words  
16 such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the  
17 gift passes in accordance with paragraph VII and the parts shall be used for transplantation or  
18 therapy if suitable and if not suitable for those purposes, may be used for research or education.

19           VII. For purposes of paragraphs II, III, and VI the following rules shall apply:

20           (a) If the part is an eye, the gift passes to the appropriate eye bank.

21           (b) If the part is tissue, the gift passes to the appropriate tissue bank.

22           (c) If the part is an organ, the gift passes to the appropriate organ procurement  
23 organization as custodian of the organ.

24           VIII. An anatomical gift of an organ for transplantation or therapy, other than an  
25 anatomical gift under subparagraph I(b), passes to the organ procurement organization as custodian  
26 of the organ.

27           IX. If an anatomical gift does not pass pursuant to paragraphs I-VIII or the decedent's body  
28 or part is not used for transplantation, therapy, research, or education, custody of the body or part  
29 passes to the person under obligation to dispose of the body or part.

30           X. A person may not accept an anatomical gift if the person knows that the gift was not  
31 effectively made under RSA 291-A:5 or RSA 291-A:10 or if the person knows that the decedent made  
32 a refusal under RSA 291-A:7 that was not revoked. For purposes of the paragraph, if a person knows  
33 that an anatomical gift was made on a document of gift, the person is deemed to know of any  
34 amendment or revocation of the gift or any refusal to make an anatomical gift on the same document  
35 of gift.

**CHAPTER 111**  
**HB 1430 – FINAL VERSION**  
**- Page 9 -**

1           XI. Except as otherwise provided in subparagraph I(b), nothing in this chapter shall affect  
2 the allocation of organs for transplantation or therapy.

3           291-A:12 Search and Notification.

4           I. The following persons shall make a reasonable search of an individual who the person  
5 reasonably believes is dead or near death for a document of gift or other information identifying the  
6 individual as a donor or as an individual who made a refusal:

7               (a) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding  
8 the individual; and

9               (b) If no other source of the information is immediately available, a hospital, as soon as  
10 practical after the individual's arrival at the hospital.

11           II. If a document of gift or a refusal to make an anatomical gift is located by the search  
12 required by subparagraph I(a) and the individual or deceased individual to whom it relates is taken  
13 to a hospital, the person responsible for conducting the search shall send the document of gift or  
14 refusal to the hospital.

15           III. A person shall not be subject to criminal or civil liability for failing to discharge the  
16 duties imposed by this section but may be subject to administrative sanctions.

17           291-A:13 Delivery of Document of Gift Not Required; Right to Examine.

18               I. A document of gift need not be delivered during the donor's lifetime to be effective.

19               II. Upon or after an individual's death, a person in possession of a document of gift or a  
20 refusal to make an anatomical gift with respect to the individual shall allow examination and  
21 copying of the document of gift or refusal by a person authorized to make or object to the making of  
22 an anatomical gift with respect to the individual or by a person to which the gift could pass under  
23 RSA 291-A:11.

24           291-A:14 Rights and Duties of Procurement Organization and Others.

25               I. When a hospital refers an individual at or near death to a procurement organization, the  
26 organization shall make a reasonable search of the records of the New Hampshire donor registry and  
27 any other donor registry that it knows exists for the geographical area in which the individual  
28 resides to ascertain whether the individual has made an anatomical gift.

29               II. A procurement organization shall be allowed reasonable access to information in the  
30 records of the department of motor vehicles through the New Hampshire donor registry pursuant to  
31 RSA 291-A:20 to ascertain whether an individual at or near death is a donor.

32               III. When a hospital refers an individual at or near death to a procurement organization, the  
33 organization may conduct any reasonable examination necessary to assess the medical suitability of  
34 a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or  
35 education from a donor or a prospective donor. During the examination period, measures necessary

**CHAPTER 111**  
**HB 1430 – FINAL VERSION**  
**- Page 10 -**

1 to maintain the potential medical suitability of the part may not be withdrawn unless the hospital or  
2 procurement organization knows that the individual expressed a contrary intent.

3 IV. Unless prohibited by law other than this chapter, at any time after a donor's death, the  
4 person to which a part passes under RSA 291-A:11 may conduct any reasonable examination  
5 necessary to assess the medical suitability of the body or part for its intended purpose.

6 V. Unless prohibited by law other than this chapter, an examination under paragraphs III  
7 or IV may include an examination of all medical and dental records of the donor or prospective  
8 donor.

9 VI. Upon the death of a minor who was a donor or had signed a refusal, unless a  
10 procurement organization knows the minor is emancipated, the procurement organization shall  
11 conduct a reasonable search for the parents of the minor and provide the parents with an  
12 opportunity to revoke or amend the anatomical gift or revoke the refusal.

13 VII. Upon referral by a hospital under paragraph I, a procurement organization shall make  
14 a reasonable search for any person listed in RSA 291-A:9 having priority to make an anatomical gift  
15 on behalf of a prospective donor. If a procurement organization receives information that an  
16 anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the  
17 other person of all relevant information.

18 VIII. Subject to RSA 291-A:11 and RSA 291-A:22, the rights of the person to which a part  
19 passes under RSA 291-A:11 are superior to the rights of all others with respect to the part. The  
20 person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the  
21 document of gift and this act, a person that accepts an anatomical gift of an entire body may allow  
22 embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the  
23 person to which the part passes under RSA 291-A:11, upon the death of the donor and before  
24 embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

25 IX. Neither the physician who attends the decedent at death nor the physician who  
26 determines the time of the decedent's death may participate in the procedures for removing or  
27 transplanting a part from the decedent.

28 X. A physician or technician may remove a donated part from the body of a donor that the  
29 physician or technician is qualified to remove.

30 291-A:15 Coordination of Procurement and Use. Each hospital in this state shall enter into  
31 agreements or affiliations with procurement organizations for coordination of procurement and use  
32 of anatomical gifts.

33 291-A:16 Sale or Purchase of Parts Prohibited.

34 I. Except as otherwise provided in paragraph II, a person that for valuable consideration,  
35 knowingly purchases or sells a part for transplantation or therapy if removal of a part from an  
36 individual is intended to occur after the individual's death commits a felony and, notwithstanding

CHAPTER 111  
HB 1430 - FINAL VERSION  
- Page 11 -

1 RSA 651:2, upon conviction shall be subject to a fine not exceeding \$50,000 or imprisonment not  
2 exceeding 5 years, or both.

3 II. A person may charge a reasonable amount for the removal, processing, preservation,  
4 quality control, storage, transportation, implantation, or disposal of a part.

5 291-A:17 Other Prohibited Acts. A person that, in order to obtain a financial gain, intentionally  
6 falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a  
7 document of gift, or a refusal commits a felony and upon conviction shall be subject to a fine not  
8 exceeding \$50,000 or imprisonment not exceeding 5 years, or both.

9 291-A:18 Immunity.

10 I. A person that acts in accordance with this chapter or with the applicable anatomical gift  
11 law of another state, or attempts in good faith to do so, shall not be liable for the act in a civil action,  
12 criminal prosecution, or administrative proceeding. Acting consistent with a document of gift shall  
13 be prima facie evidence of good faith.

14 II. Neither the person making an anatomical gift nor the donor's estate shall be liable for  
15 any injury or damage that results from the making or use of the gift.

16 III. In determining whether an anatomical gift has been made, amended, or revoked under  
17 this chapter, a person may rely upon representations of an individual listed in RSA 291-A:9, I  
18 relating to the individual's relationship to the donor or prospective donor unless the person knows  
19 that the representation is untrue.

20 291-A:19 Law Governing Validity; Choice of Law as to Execution of Document of Gift;  
21 Presumption of Validity.

22 I. A document of gift is valid if executed in accordance with:

- 23 (a) This chapter;  
24 (b) The laws of the state or country where it was executed; or  
25 (c) The laws of the state or country where the person making the anatomical gift was  
26 domiciled, has a place of residence, or was a national at the time the document of gift was executed.

27 II. If a document of gift is valid under this section, the law of this state shall govern the  
28 interpretation of the document of gift.

29 III. A person may presume that a document of gift or amendment of an anatomical gift is  
30 valid unless that person knows that it was not validly executed or was revoked.

31 291-A:20 Donor Registry.

32 I. A donor registry shall:

- 33 (a) Provide a database that allows an individual who has made an anatomical gift to be  
34 included in the donor registry;

**CHAPTER 111**  
**HB 1430 – FINAL VERSION**  
**- Page 12 -**

1           (b) Be accessible to a procurement organization to allow it to obtain relevant information  
2 on the donor registry to determine, at or near death of the donor or a prospective donor, whether the  
3 donor or prospective donor has made an anatomical gift; and

4           (c) Be accessible for purposes of subparagraphs (a) and (b) 7 days a week on a 24-hour  
5 basis.

6           II. Personally identifiable information on a donor registry about a donor or prospective donor  
7 may not be used or disclosed without the express consent of the donor, prospective donor, or person  
8 that made the anatomical gift for any purpose other than to determine, at or near death of the donor  
9 or prospective donor, whether the donor or prospective donor has made, amended, or revoked an  
10 anatomical gift.

11           III. This section shall not prohibit any person from creating or maintaining a donor registry  
12 that is not established by or under contract with the state. Any such registry shall comply with  
13 paragraphs I and II.

14           **291-A:21 Cooperation Between Medical Examiner and Procurement Organization.**

15           I. The chief medical examiner shall cooperate with procurement organizations to maximize  
16 the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or  
17 education.

18           II. If a medical examiner receives notice from a procurement organization that an  
19 anatomical gift might be available or was made with respect to a decedent whose body is under the  
20 jurisdiction of the medical examiner and a post-mortem examination is going to be performed, unless  
21 the medical examiner denies recovery in accordance with RSA 291-A:22, the medical examiner or  
22 designee shall conduct a post-mortem examination of the body or the part in a manner and within a  
23 period compatible with its preservation for the purposes of the gift.

24           III. A part may not be removed from the body of a decedent under the jurisdiction of a  
25 medical examiner for transplantation, therapy, research, or education unless the part is the subject  
26 of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner may not  
27 be delivered to a person for research or education unless the body is the subject of an anatomical gift.  
28 This paragraph does not preclude a medical examiner from performing the medicolegal investigation  
29 upon the body or parts of a decedent under the jurisdiction of the medical examiner.

30           **291-A:22 Facilitation of Anatomical Gift From Decedent Whose Body is Under Jurisdiction of**  
31 **Medical Examiner.**

32           I. Upon request of a procurement organization, a medical examiner shall release to the  
33 procurement organization the name, contact information, and available medical and social history of  
34 a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's body or  
35 part is medically suitable for transplantation, therapy, research, or education, the medical examiner  
36 shall release post-mortem examination results to the procurement organization. The procurement

CHAPTER 111  
HB 1430 - FINAL VERSION  
- Page 13 -

1 organization may make a subsequent disclosure of the post-mortem examination results or other  
2 information received from the medical examiner only if relevant to transplantation or therapy.

3 II. The medical examiner may conduct a medicolegal examination by reviewing all medical  
4 records, laboratory test results, x-rays, other diagnostic results, and other information that any  
5 person possesses about a donor or prospective donor whose body is under the jurisdiction of the  
6 medical examiner which the medical examiner determines may be relevant to the investigation.

7 III. A person that has any information requested by a medical examiner pursuant to  
8 paragraph II shall provide that information as expeditiously as possible to allow the medical  
9 examiner to conduct the medicolegal investigation within a period compatible with the preservation  
10 of parts for the purpose of transplantation, therapy, research, or education.

11 IV. If an anatomical gift has been or might be made of a part of a decedent whose body is  
12 under the jurisdiction of the medical examiner and a post-mortem examination shall not be required,  
13 or the medical examiner determines that a post-mortem examination is required but that the  
14 recovery of the part that is the subject of an anatomical gift will not interfere with the examination,  
15 the medical examiner and procurement organization shall cooperate in the timely removal of the  
16 part from the decedent for the purpose of transplantation, therapy, research, or education.

17 V. If an anatomical gift of a part from the decedent under the jurisdiction of the medical  
18 examiner has been or might be made, but the medical examiner initially believes that the recovery of  
19 the part could interfere with the post-mortem investigation into the decedent's cause or manner of  
20 death, the medical examiner shall consult with the procurement organization or physician or  
21 technician designated by the procurement organization about the proposed recovery. After  
22 consultation, the medical examiner may allow the recovery.

23 VI. Following the consultation under paragraph V, in the absence of mutually agreed-upon  
24 protocols to resolve conflict between the medical examiner and the procurement organization, if the  
25 medical examiner intends to deny recovery, the medical examiner or designee, at the request of the  
26 procurement organization, shall attend the removal procedure for the part before making a final  
27 determination not to allow the procurement organization to recover the part. During the removal  
28 procedure, the medical examiner or designee may allow recovery by the procurement organization to  
29 proceed, or, if the medical examiner or designee reasonably believes that the part may be involved in  
30 determining the decedent's cause or manner of death, deny recovery by the procurement  
31 organization.

32 VII. If the medical examiner or designee denies recovery under paragraph VI, the medical  
33 examiner or designee shall:

- 34 (a) Explain in a record the specific reasons for not allowing recovery of the part;  
35 (b) Include the specific reasons in the records of the medical examiner; and  
36 (c) Provide a record with the specific reasons to the procurement organization.

CHAPTER 111  
HB 1430 – FINAL VERSION  
- Page 14 -

1 VIII. If the medical examiner or designee allows recovery of a part under paragraph IV, V,  
2 or VI, the procurement organization, upon request, shall cause the physician or technician who  
3 removes the part to provide the medical examiner with a record describing the condition of the part,  
4 a biopsy, a photograph, and any other information and observations that would assist in the post-  
5 mortem examination.

6 291-A:23 Honoring an Individual's Decision to Donate. A person's decision to make a donation  
7 of that person's own body, organ, or tissue after death shall be honored. In the absence of a  
8 revocation or amendment, health care providers and procurement organizations shall act in  
9 accordance with the donor's decision and may take appropriate actions to effect the anatomical gift.

10 291-A:24 Uniformity of Application and Construction. In applying and construing this uniform  
11 act, consideration must be given to the need to promote uniformity of the law with respect to its  
12 subject matter among states that enact it.

13 291-A:25 Relation to Electronic Signatures in Global and National Commerce Act. This act  
14 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15  
15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(a) of that act, 15  
16 U.S.C. section 7001, or authorize electronic delivery of any of the notices described in section 103(b)  
17 of that act, 15 U.S.C. section 7003(b).

18 111:2 Eye Procurement; Cross Reference Charge. Amend RSA 325:31-a to read as follows:

19 325:31-a Eye Procurement Technician Qualification. No person shall perform eye tissue  
20 removal or processing pursuant to ~~[RSA 291-A:3, IV]~~ **RSA 291-A:11** unless such person has  
21 successfully completed a course of training acceptable to a procurement organization as defined in  
22 ~~[RSA 291-A:2, X]~~ **RSA 291-A:2, XX**. The procurement organization shall have the power to establish  
23 qualifications and terms for the successful completion of the course of training.

24 111:3 Effective Date. This act shall take effect 60 days after its passage.

25 Approved: June 1, 2010

26 Effective Date: July 31, 2010

# Committee Minutes



**SENATE CALENDAR NOTICE  
HEALTH AND HUMAN SERVICES**

✓ Senator Kathleen Sgambati Chairman  
 ✓ Senator Peggy Gilmour V Chairman  
 ✓ Senator Molly Kelly  
 ✓ Senator John Gallus  
 ✓ Senator Michael Downing

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: April 13, 2010**

**HEARINGS**

**Tuesday**

**4/20/2010**

HEALTH AND HUMAN SERVICES

SH 103

8:30 AM

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

8:30 AM	HB1363	relative to continuing care communities.
8:45 AM	HB1384	establishing a suicide fatality review committee.
9:00 AM	HB1430	relative to the uniform anatomical gift act.
9:15 AM	HB1526	requiring the department of health and human services to establish a methodology for determining certain high cost long-term care cases.

**Sponsors:**

**HB1363**

Rep. Jill Hammond

**HB1384**

Rep. Roger Wells

**HB1430**

Rep. Robert Foose

**HB1526**

Rep. Kate Miller

# Health and Human Services Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Heidi Mitchell, *Legislative Aide*

**RE:** Hearing report on **HB 1430** - *AN ACT relative to the uniform anatomical gift act.*

**HEARING DATE:** April 20, 2010

**MEMBERS OF THE COMMITTEE PRESENT:** Sen. Sgambati; Sen. Gilmour; Sen. Downing; Sen. Gallus; Sen. Kelly.

**MEMBERS OF THE COMMITTEE ABSENT:** None.

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**Sponsor:** Rep. Foose, Merr. 1.

**What the bill does:** This bill adopts the uniform anatomical gift act.

**Who supports the bill:** Rep. Foose; Sean Fitzpatrick, New England Organ Bank; Gina Balkus, Dartmouth-Hitchcock.

**Who opposes the bill:** No one.

**Summary of testimony received:** Rep. Foose introduced the bill to the committee.

### Rep. Foose

- This bill is an update of the Uniform Anatomical Gift Act of 1968. It was revised most recently in 1997 and New Hampshire adopted those changes at that time. The bill passed by HHS&EA, 18-0.
- There are currently 200 organ donations occur in New England, per year, with 25 of those occurring in New Hampshire.
- The intent of the bill is to make organ donation more simple and consistent with the wishes of the donor.
- Rep. Foose submitted a letter of testimony in support of HB 1430 that was submitted during the House hearing for the bill by Nicole Julal, Legislative Counsel for the Uniform Law Commission. The ULC is composed of Commissioners appointed by governors and state legislatures from all fifty states for the purpose of drafting uniform laws in areas where uniformity is desirable and practicable.
  - Passing this bill will bring New Hampshire's organ donation statute in step with federal laws and organ donation practices.

- This will improve New Hampshire's organ donation statute, which may lead to increased organ donations and more lives saved.
- Rep. Foose submitted a side-by-side comparison of the current legislation and how HB 1430 would improve it.
- In response to questions from the committee, Rep. Foose stated that the waiting list for organ transplants in New England is 4,000. This bill is needed in order to make it as simple as possible for organ donors so that more lives can be saved. Rep. Foose also stated that the updates have been adopted in 40 other states, and the change to make intentional falsification of a document of gift or refusal a felony is uniform with what has been passing across the country.

**Sean Fitzpatrick, Director of Public Affairs, New England Organ Bank**

- In support of the bill, Mr. Fitzpatrick explained that there are federal requirements for hospitals to report deaths and impending deaths into a universal system that can be used to determine whether individuals are organ donors. He stated that in most cases individuals or their families decide to donate organs, however many people don't die in a way suitable for organ donation.
- This bill:
  - Better defines who can donate a loved one's organs (Pg. 6, lines 14-25);
  - Clarifies the consent process by enabling a "majority of class" to decide;
  - Prioritizes "durable power of attorney for health care" as the top donation decision maker consistent with the agent's priority as decision maker in other health matters.
  - Harmonizes New Hampshire's UAGA with federal law, current technology and medical practice.
  - Amendments made in the House maintain the provisions of existing New Hampshire law that are already working well (i.e. New Hampshire Donor Registry).
- The more states in New England that comply with the current changes in the UAGA, the easier it is for the organ banks to do their jobs.

**Gina Balkus, Dartmouth-Hitchcock**

- Dartmouth-Hitchcock Medical Center is the only center in New Hampshire that performs organ transplants and has organ donor candidates. They are in support of this bill.

**Funding:** Not applicable.

**Future Action:** Sen. Gilmour moved Ought to Pass for HB 1430, Sen. Sgambati seconded the motion. The Committee voted 5-0 in favor of the motion. Sen. Gilmour will report the bill out of committee.

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 [file: HB 1430 report]  
 Date: April 20, 2010

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Date: April 20, 2010  
Time: 9:17 A.M.  
Room: SH RM 103

The Senate Committee on Health and Human Services held a hearing on the following:

HB 1430 relative to the uniform anatomical gift act.

Members of Committee present:            Senator Sgambati  
   Senator Gilmour  
   Senator Kelly  
   Senator Gallus  
   Senator Downing

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The Chair, Senator Kathleen G. Sgambati, opened the hearing on HB 1430 and invited the prime sponsor, Representative Robert Foose, to introduce the legislation.

Representative Robert Foose: Thank you, Madam Chair. For the record, Randy Foose, representing Merrimack District 1, and bringing HB 1430 to you.

This is an update of the Uniform Anatomical Gift Act. The Act was originally passed in, I'm sorry, 1987. It was revised again nationally in 1997. In both cases, New Hampshire adopted the Uniform Act, and it's now coming back to us with a series of revisions proposed by the Uniform Law Commission.

The bill passed the House very comfortably, I think, with an eighteen to two vote in the Health and Human Services Committee.

And, I have with me today, Sean Fitzpatrick from the New England Organ Bank. It had, the bill has been supported by everyone who participates in the process of organ donation. It, it, I have brought with me the testimony from the Uniform Law Commission attorney who met with the House. And, I'd pass that, that out; it's a two-pager. Sorry about the lack of the staples; we're cutting back on the budget in the House.

And, I also have brought with me a side-by-side comparison that runs to 21 pages. I didn't make copies for the Committee, but I will leave it with you, of

*jac*

the current legislation and how it's been improved by the, this most recent effort.

Currently, there are about 200 organ donations in New England on an annual basis; about 25 occur in New Hampshire. The overarching intent of the bill is to, to make, make organ donation more simple and more consistent with the wishes of the donor.

Mr. Fitzpatrick will, is here to answer technical questions for you, but I'd be happy to answer any other questions that you might have.

Senator Kathleen G. Sgambati, D. 4: Thank you very much. Any questions?

Senator Peggy Gilmour, D. 12: Yeah, just a quick one. Would you say those numbers again? How many? Two hundred people in New England receive?

Representative Foose: Two hundred organ donations in New England.

Senator Peggy Gilmour, D. 12: On a 4,000 waiting list?

Representative Foose: Yes. The, the, that's why we need to make it as...continue to work to make it as simple as possible. I asked, as this has moved along, for any kind of an estimate that the updated legislation might produce, and the...I don't have those. Those numbers are not available.

Senator Kathleen G. Sgambati, D. 4: Thank you very much, Representative.

Senator Molly Kelly, D. 10: I have just one more quick question.

Senator Kathleen G. Sgambati, D. 4: Oh, sure.

Senator Molly Kelly, D. 10: Just one quick question.

Senator Kathleen G. Sgambati, D. 4: Representative, we have one more question.

Senator Molly Kelly, D. 10: I just was looking at...

Representative Foose: Sure.

Senator Molly Kelly, D. 10: ...what...there in testimony.

dnc

Representative Foose: Yep.

Senator Molly Kelly, D. 10: And, you have on the second page, you have, "House Bill 1430 makes intentional falsification of a document of gift or refusal a felony"?

Representative Foose: Hm-hmm.

Senator Molly Kelly, D. 10: And, we're such a high standard of this. How did you arrive at the felony?

Representative Foose: That is a product of the work that the Uniform Law Commission has done across the, across the country.

One of the other quick pieces of data that I didn't share was that this has been adopted in, I believe it's 40 states nationally, so we're at the latter, latter end of the process. But, it's been introduced, I think, in every other state, and is moving through other legislative processes.

**Please see Attachment #1 – Prepared testimony offered by Nicole Julal, Legislative Counsel for the Uniform Law Commission, dated January 28, 2010, submitted by Representative Robert Foose.**

**Please see Attachment #2 – Comparison of New Hampshire HB 1430 with existing New Hampshire Law, updated February 2, 2010.**

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Senator Molly Kelly, D. 10: Thank you.

Senator Kathleen G. Sgambati, D. 4: Thank you very much.

I'll call on Mr. Fitzpatrick?

Mr. Sean Fitzpatrick: Good morning. I'm Sean Fitzpatrick. I'm the Director of Public Affairs at New England Organ Bank. New England Organ Bank is the federally designated, non-profit organization that recovers organs and tissues for transplants here in the New England region.

I thought I'd take a step back and, just so you know, I also have written testimony here also. To give you a quick overview of the system, so that this puts this bill into better context; the system basically works this way. For organ donation, federal regulations require hospitals to report all deaths and impending deaths to their local organ procurement organization, which is New England Organ Bank in New Hampshire. So, that means, whenever

*doc*

anybody dies in New Hampshire we get a phone call. And, we have the opportunity then, to look up on a database to see whether or not the person was registered as a donor. You can sign up either online, at a private database like Donate Life New England, or most people sign up on their driver's license through the Department of Motor Vehicle. Currently, there are about, about 150,000 people in New Hampshire who are signed up. The process started about a year ago as a result of the law passed by the Legislature here to allow people to sign up on their licenses and to make that information available in real-time to the organ procurement organization.

So, what happens is, in instances where someone has signed up to be a donor, the family is notified that the deceased wanted to be a donor, and donation goes forward, and the family is provided information about that process. Here in New England, that's about 30% of the time in New England that somebody has already signed up. In the other 70% of the time, the family makes the decision. And, in those cases, about 60% of the time that 70% of families do say yes to donation.

So, the real problem with donation isn't really so much of people saying no, but it really is very few people die in a manner suitable for organ donation. And, that's a good thing. And, the number goes down every year with the advent of seatbelts and air bags, and children wearing bicycle helmets, and more traffic on the roads make for slower driving. It actually reduces each year the number of potential donors. Of course, that conspires against the people who are waiting for organs. But, we understand that safety is really important, but anything we can do to increase the number of donors available from those who happen to die in a manner suitable for donation, is of utmost importance to us.

As the Representative mentioned, you already have a Uniform Anatomical Gift Act in New Hampshire, and although it's a rather large bill, the changes are not very significant. A lot of it is tweaking the current law to better reflect how the system, how the system already works.

One of the, the two bigger changes that you can see in the bill is that, in the order of priority where the, we are told exactly who has the opportunity to donate a loved one's organs. It starts off with an agent, like, for instance, a healthcare agent. The importance of that is that there are individuals who, before they die, they specifically name somebody who they want to make their decisions for them. And, so, the, when the UAGA was passed, ten, fifteen years ago, that wasn't as common as a, as a procedure. So, at the top of the list, and that would be in, just so you know, it would be page 6 of the bill under the, they give a list of those individuals who are available to make an anatomical gift. So, it starts with agent, and then it goes back down

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through a very traditional hierarchy of individuals; spouse, adult children of the decedent, parents of the decedent, etc., on down. This is important because this gives real clarity to the organ bank as to who has legal right to consent, if the individual themselves have not consented. Usually, you only go past the first four or so of these, and it's very seldom that you get to the bottom of the list. But, what this tries to do is that, for every individual who dies, there is somebody who can make the decision, either yes or no, regarding donation.

The other larger change is majority rule for a particular class, and usually that comes into place when you get to (e), adult siblings of the decedent, when the parents are both passed on, and the individual only has siblings. In the past, a single sibling, say among five or six, could veto the decision of the other five, or four or five to make a donation decision. This would allow that the majority of the, of a particular class, to be able to make the decision regarding, regarding donation.

But, that, you know, that's the general overview of the, of the process, and a quick understanding of the particular parts of the bill. In general, uniformity is better than non-uniformity.

New England Organ Bank works in six different states, so when it comes to training staff, the more commonality between all states, the better off. Individuals who live in Maine know that, if they die in New Hampshire, generally, the same rules about donation will take place. That's important, and that's why the uniform commission got involved.

And, also, so, you know, we did not adopt the model language in this regarding the donor registry. We worked with the Legislature. It was two or three years ago, on the donor registry through the Motor Vehicles Department, and, we had negotiated language out, and it was important that we keep that language that had been agreed upon by the Legislature. So, you'll see that that, it's actually the existing language for the donor registry that exists in this language also.

Senator Kathleen G. Sgambati, D. 4: Okay. Thank you. Any questions? Thank you very much, sir.

Mr. Fitzpatrick: Right.

**Please see Attachment #3 - Prepared written testimony of Sean Fitzpatrick, Director of Public Affairs, New England Organ Bank.**



Senator Kathleen G. Sgambati, D. 4: Okay, is there anyone else needing to speak on HB 1430?

Gina Balkus: Madam Chair, just very quickly. Gina Balkus for Dartmouth-Hitchcock.

As the state's transplant centers only center...

Senator Kathleen G. Sgambati, D. 4: You need to sit down and introduce yourself for the record.

Ms. Balkus: Okay. Gina Balkus for Dartmouth-Hitchcock. DHMC is the state's only center to perform transplants, but also because we're a Level I Trauma Center, we're also a location where, frequently we have patients who have been the victims of trauma or neurological issues who, when they die, are donation, organ donor candidates.

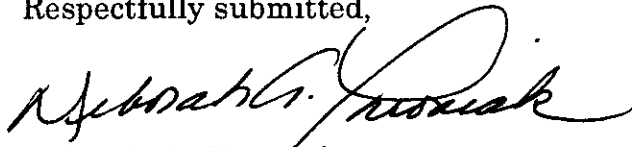
And, we strongly support this bill, and ask that you pass it. Thank you for the opportunity to speak on the bill.

Senator Kathleen G. Sgambati, D. 4: Okay. Thank you very much.

Okay, with that I will close the hearing on HB 1430.

Hearing concluded at 9:28 A.M.

Respectfully submitted,



Deborah A. Chroniak  
Committee Secretary  
7-9-10

3 Attachments



**Uniform Law Commission**  
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

ATTACHMENT # 1

111 N. Wabash Ave.  
Suite 1010  
Chicago, IL 60602  
(312) 450-6600 tel  
(312) 450-6601 fax  
www.nccusl.org

**Testimony Offered to the New Hampshire House Health, Human Services and Elderly Affairs Committee Regarding House Bill 1430 – The Revised Uniform Anatomical Gift Act.**

**Testimony Offered by Nicole Julal, Legislative Counsel for the Uniform Law Commission on January 28, 2010.**

*Opening Remarks*

Thank you for the opportunity to address this Committee regarding the Uniform Anatomical Gift Act (UAGA), presented here today as House Bill 1430 and promulgated by the Uniform Law Commission formerly known as the National Conference of Commissioners on Uniform State Laws. Thank you Representative Foose for sponsoring such an important piece of legislation!

The Uniform Law Commission (ULC) was founded in 1892 and is composed of Commissioners appointed by governors and state legislatures from all fifty states. The purpose of the ULC is to draft uniform laws in areas where uniformity is desirable and practicable. Each uniform act typically takes over two years to draft and is open to public participation.

*The Uniform Anatomical Gift Act (UAGA)*

The UAGA was first drafted in 1968, amended in 1987 and recently revised in 2006 in light of changes in federal law and regulation and related developments in the field of organ donation. New Hampshire's organ donation statute is an amended version of the 1987 UAGA. **The UAGA (2006) will bring New Hampshire's organ donation statute in step with federal laws and organ donation practices.**

*Endorsements for the Revised Uniform Anatomical Gift Act (2006)*

The Revised Uniform Anatomical Gift Act (2006) has been endorsed by the American Medical Association, Association for Organ Procurement Organizations, National Kidney Foundation, and Eye Bank Association of America.

*Why New Hampshire Needs the Revised Uniform Anatomical Gift Act (2006)*

Each year, over 94,000 Americans await life-saving organ transplants and approximately 19 of these patients die every day while still waiting. The statistics on the lack of organs available for donation are staggering. **The Uniform Anatomical Gift Act of 2006, House Bill 1430, is designed to improve New Hampshire's organ donation statute, which may lead to increased organ donations and more lives saved.**

**Key features of HB 1430 include:**

- HB 1430 provides many new and important definitions. Ex. "Agent", "disinterested witness" and "reasonably available."

- HB 1430 strengthens the concept of “first-person” consent under which no other person can alter the individual’s decision to donate (or not to donate) his or her parts after death.
- HB 1430 provides clearer rules and procedures for the post-death donation decision process.
- HB 1430 provides, as a default rule, that transplantation and therapy are given priority over research or education when priority is not clear.
- HB 1430 makes intentional falsification of a document of gift or refusal a felony, but provides that individuals acting in good faith in accordance with the Act are not liable for their actions in civil, criminal or administrative proceedings.

#### *The Importance of Uniformity*

Uniformity in organ donation laws among states is important because transplantation occurs across state boundaries and requires speed and efficiency if organs are to be successfully transplanted. **It is worth noting that your neighbor Maine also adopted the Uniform Anatomical Gift Act (2006).**

#### *National Efforts*

The national response to the Uniform Anatomical Gift Act (2006) has been very exciting. **So far, thirty-nine (39) states have enacted the Act** and additional 10 will introduce the Act during the 2010 legislative session.

#### *Working with the Stakeholders*

The Uniform Law Commission has been, and continues to be, committed to working with all interested and affected parties. ULC worked with stakeholders during the drafting process, obtaining their input and addressing their concerns. **HB 1430 is supported by the New England Organ Bank as well as other stakeholders.**

**For the above reasons, the Uniform Law Commission respectfully request that you vote in favor of HB 1430. Thank you.**

**Comparison of New Hampshire HB 1430 with  
existing New Hampshire Law**

(Updated 2/2/10)

**Legislative History of New Hampshire Anatomical Gift Act:**

- New Hampshire adopted the original 1968 UAGA but replaced that enactment with the 1987 UAGA in 1997. New Hampshire's UAGA is codified at RSA §291-A:1 et seq.
- New Hampshire's UAGA was amended by 2006, 216:5, 6, eff. July 31, 2006.
- HB 1430 was introduced on January 1, 2010 and is in Committee as of February 2, 2010
- Please note that existing NH law RSA 263:41 will not be replaced by HB 1430

<b>New Hampshire HB 1430</b>	<b>New Hampshire Law</b>
291-A:1 Short Title. This chapter may be cited as the Revised Uniform Anatomical Gift Act.	<u>291-A:1 Short Title.</u>  This chapter may be cited as the "Uniform Anatomical Gift Act."
<p>291-A:2 Definitions. In this chapter:</p> <p>I. "Adult" means an individual who is at least 18 years of age.</p> <p>II. "Agent" means an individual:</p> <p>(a) Authorized to make health-care decisions on the principal's behalf by a power of attorney for health care pursuant to RSA 137-J; or</p> <p>(b) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.</p> <p>III. "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.</p> <p>IV. "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.</p> <p>V. "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a</p>	<p><u>291-A:2 Definitions.</u></p> <p>In this chapter:</p> <p>I. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.</p> <p>II. "Decedent" means a deceased individual and includes a stillborn infant or fetus.</p> <p>III. "Document of gift" means a card, inclusion in the donor registry for anatomical gifts under <u>RSA 263:41</u>, a will, or other writing used to make an anatomical gift.</p> <p>IV. "Donee" means the recipient or recipients of the donated organ or organs.</p> <p>V. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.</p> <p>V-a. "Donor registry" means an electronic database developed and maintained by any federally-designated organ procurement organization to identify donors.</p> <p>VI. "Eye procurement technician" means an individual who has successfully completed a course of training, acceptable to a procurement organization, to remove or process eyes or parts of eyes, pursuant to <u>RSA 325:31-a</u>.</p> <p>VII. "Hospital" means a facility licensed, accredited, or approved as a hospital under the laws of any state, or a</p>

<p>person to which an anatomical gift could pass under RSA 291-A:11.</p>	<p>facility operated as a hospital by the United States government, a state, or a subdivision of a state.</p>
<p>VI. "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or inclusion in a donor registry.</p>	<p>VIII. "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.</p>
<p>VII. "Donor" means an individual whose body or part is the subject of an anatomical gift.</p>	<p>IX. "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.</p>
<p>VIII. "Donor registry" means the New Hampshire Donor Registry established pursuant to RSA 263:41 or any other electronic database developed and maintained by any federally-designated organ procurement organization that identifies donors and complies with RSA 291-A:20.</p>	<p>X. "Physician" or "surgeon" means an individual licensed under RSA 329.</p>
<p>IX. "Driver's license" means a license or permit issued by the division of motor vehicles to operate a vehicle, whether or not conditions are attached to the license or permit.</p>	<p>XI. "Procurement organization" means a person licensed, accredited, or approved under any state or federal law for procurement, distribution, or storage of human bodies or parts.</p>
<p>X. "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.</p>	<p>XII. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.</p>
<p>XI. "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.</p>	
<p>XII. "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.</p>	
<p>XIII. "Identification card" means an identification card issued by the division of motor vehicles.</p>	
<p>XIV. "Know" means to have actual knowledge.</p>	
<p>XV. "Minor" means an individual who is under 18 years of age.</p>	
<p>XVI. "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.</p>	
<p>XVII. "Parent" means a parent whose parental rights have not been terminated.</p>	

XVIII. "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

XIX. "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

XX. "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

XXI. "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

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

XXIII. "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

XXIV. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

XXV. "Refusal" means a record created under RSA 291-A:7 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

XXVI. "Sign" means, with the present intent to authenticate or adopt a record:

- (a) To execute or adopt a tangible symbol; or
- (b) To attach to or logically associate with the record an electronic symbol, sound, or process.

XXVII. "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

XXVIII. "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is

<p>donated for the purpose of research or education.</p> <p>XXIX. "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.</p> <p>XXX. "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.</p>	
<p>291-A:3 Applicability. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.</p>	
<p>291-A:4 Who May Make Anatomical Gift Before Donor's Death. Subject to RSA 291-A:8, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in RSA 291-A:5 by:</p> <p>I. The donor, if the donor is an adult or if the donor is a minor and is:</p> <p>(a) Emancipated; or</p> <p>(b) Authorized under state law to apply for a driver's license or identification card;</p> <p>II. An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;</p> <p>III. A parent of the donor, if the donor is an unemancipated minor; or</p> <p>IV. The donor's guardian.</p>	<p><b><u>291-A:3 Making, Amending, Revoking, and Refusing to Make Anatomical Gifts by Individual.</u></b></p> <p>I. Any individual of sound mind and 18 years of age or more may:</p> <p>(a) Make an anatomical gift for any of the purposes stated in <u>RSA 291-A:7, I</u>;</p> <p>(b) Limit an anatomical gift to one or more of the purposes stated in <u>RSA 291-A:7, I</u>; or</p> <p>(c) Refuse to make an anatomical gift.</p>
<p>291-A:5 Manner of Making Anatomical Gift Before Donor's Death.</p> <p>I. A donor may make an anatomical gift:</p> <p>(a) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;</p> <p>(b) In a will;</p> <p>(c) During a terminal illness or injury of the donor, by any form of communication</p>	<p><b><u>291-A:3 Making, Amending, Revoking, and Refusing to Make Anatomical Gifts by Individual.</u></b></p> <p>II. An anatomical gift shall be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift shall be signed by another individual and by 2 witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and shall state that it has been so signed.</p> <p>III. If a document of gift is made by registering as an organ and tissue donor through the division of motor vehicles pursuant to <u>RSA 263:41</u>, revocation, suspension, expiration, or cancellation of the license does not invalidate</p>

<p>addressed to at least 2 adults, at least one of whom is a disinterested witness; or</p> <p>(d) As provided in paragraph II.</p> <p>II. A donor or other person authorized to make an anatomical gift under RSA 291-A:4 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall:</p> <p>(a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and</p> <p>(b) State that it has been signed and witnessed as provided in subparagraph (a).</p> <p>III. Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.</p> <p>IV. An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.</p>	<p>the anatomical gift.</p> <p>IV. A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift shall employ or authorize any physician, surgeon, or their designee, or eye procurement technician to carry out the appropriate procedures.</p> <p>V. An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the death of the testator, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.</p>
<p><b>291-A:6 Amending or Revoking Anatomical Gift Before Donor's Death.</b></p> <p>I. Subject to RSA 291-A:8, a donor or other person authorized to make an anatomical gift under RSA 291-A:4 may amend or revoke an anatomical gift by:</p> <p>(a) A record signed by:</p> <p>(1) The donor;</p> <p>(2) The other person; or</p> <p>(3) Subject to paragraph II, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or</p> <p>(b) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly</p>	<p><b><u>291-A:3 Making, Amending, Revoking, and Refusing to Make Anatomical Gifts by Individual.</u></b></p> <p>VI. A donor may amend or revoke an anatomical gift, not made by will, only by:</p> <p>(a) A signed statement.</p> <p>(b) Any form of communication during a terminal illness or injury addressed to a physician or surgeon.</p> <p>(c) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.</p> <p>VII. The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills under RSA 551, or as provided in paragraph VI.</p>



<p>or by inconsistency.</p> <p>II. A record signed pursuant to subparagraph I (a)(3) shall:</p> <p>(a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and</p> <p>(b) State that it has been signed and witnessed as provided in paragraph I.</p> <p>III. Subject to RSA 291-A:8, a donor or other person authorized to make an anatomical gift under RSA 291-A:4 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.</p> <p>IV. A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least 2 adults, at least one of whom is a disinterested witness.</p> <p>V. A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in paragraph I.</p>	
<p>291-A:7 Refusal to Make Anatomical Gift; Effect of Refusal.</p> <p>I. An individual may refuse to make an anatomical gift of the individual's body or part by:</p> <p>(a) A record signed by:</p> <p>(1) The individual; or</p> <p>(2) Subject to paragraph II, another individual acting at the direction of the individual if the individual is physically unable to sign;</p> <p>(b) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or</p> <p>(c) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least 2 adults, at least one of whom is a disinterested witness.</p> <p>II. A record signed pursuant to subparagraph I (a)(2) shall:</p>	<p><b><u>291-A:3 Making, Amending, Revoking, and Refusing to Make Anatomical Gifts by Individual.</u></b></p> <p>IX. An individual may refuse to make an anatomical gift of the individual's body or part by:</p> <p>(a) A writing signed in the same manner as a document of gift;</p> <p>(b) A statement attached to or imprinted on a donor's motor vehicle driver's license;</p> <p>(c) Any other writing used to identify the individual as refusing to make an anatomical gift; or</p> <p>(d) An oral statement or other form of communication addressed to a physician or surgeon during a terminal illness or injury.</p> <p><b><u>291-A:4 Making, Revoking, and Objecting to Anatomical Gifts, by Others.</u></b></p> <p>V. A failure to make an anatomical gift under paragraph I is not an objection to the making of an anatomical gift.</p>

(a) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(b) State that it has been signed and witnessed as provided in subparagraph (a).

III. An individual who has made a refusal may amend or revoke the refusal:

(a) In the manner provided in paragraph I for making a refusal;

(b) By subsequently making an anatomical gift pursuant to RSA 291-A:5 that is inconsistent with the refusal; or

(c) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

IV. Except as otherwise provided in RSA 291-A:8, VIII, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

291-A:8 Preclusive Effect of Anatomical Gift, Amendment, or Revocation.

I. Except as otherwise provided in paragraph VII and subject to paragraph VI, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under RSA 291-A:5 or an amendment to an anatomical gift of the donor's body or part under RSA 291-A:6.

II. A donor's revocation of an anatomical gift of the donor's body or part under RSA 291-A:6 is not a refusal and does not bar another person specified in RSA 291-A:4 or RSA 291-A:9 from making an anatomical gift of the donor's body or part under RSA 291-A:5 or RSA 291-A:10.

III. If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under RSA 291-A:5 or an amendment to an anatomical gift of the donor's body or part under RSA 291-A:6, another person may not

**291-A:3 Making, Amending, Revoking, and Refusing to Make Anatomical Gifts by Individual.**

VIII. An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death. In the absence of a revocation or amendment of any document of gift, health care providers licensed in this state and procurement organizations shall act in accordance with the donor's intention and may take appropriate actions to effect the anatomical gift.

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X. In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under RSA 291-A:4 or on a removal or release of other parts under RSA 291-A:5.

XI. In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to paragraph

<p>make, amend, or revoke the gift of the donor's body or part under RSA 291-A:10.</p> <p>IX.</p> <p>IV. A revocation of an anatomical gift of a donor's body or part under RSA 291-A:6 by a person other than the donor shall not bar another person from making an anatomical gift of the body or part under RSA 291-A:5 or RSA 291-A:10.</p> <p>V. In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under RSA 291-A:4, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.</p> <p>VI. In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under RSA 291-A:4, an anatomical gift of a part for one or more of the purposes set forth in RSA 291-A:4 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under RSA 291-A:5 or RSA 291-A:10.</p> <p>VII. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.</p> <p>VIII. If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.</p>	<p>IX.</p>
<p>291-A:9 Who May Make Anatomical Gift of Decedent's Body or Part.</p> <p>I. Subject to paragraphs II and III and unless barred by RSA 291-A:7 or RSA 291-A:8, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:</p> <p>(a) An agent of the decedent at the time of death who could have made an anatomical gift under RSA 291-A:4, II immediately before the decedent's death;</p> <p>(b) The spouse of the decedent;</p> <p>(c) Adult children of the decedent;</p>	<p><b><u>291-A:4 Making, Revoking, and Objecting to Anatomical Gifts, by Others.</u></b></p> <p>I. Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, has made an unrevoked refusal to make that anatomical gift:</p> <p>(a) The spouse of the decedent.</p> <p>(b) An adult son or daughter of the decedent.</p> <p>(c) A parent of the decedent.</p> <p>(d) An adult brother or sister of the decedent.</p> <p>(e) A grandparent of the decedent.</p>

<p>(d) Parents of the decedent;</p> <p>(e) Adult siblings of the decedent;</p> <p>(f) Adult grandchildren of the decedent;</p> <p>(g) Grandparents of the decedent;</p> <p>(h) An adult who exhibited special care and concern for the decedent;</p> <p>(i) The persons who were acting as the guardians of the person of the decedent at the time of death; and</p> <p>(j) Any other person having the authority to dispose of the decedent's body.</p> <p>II. If there is more than one member of a class listed in subparagraphs I(a), (c), (d), (e), (f), (g), or (i) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under RSA 291-A:11 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.</p> <p>III. A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under paragraph I is reasonably available to make or to object to the making of an anatomical gift.</p>	<p>(f) A guardian of the person of the decedent at the time of death.</p> <p>(g) A designated agent under the durable power of attorney for health care, pursuant to RSA 137-J.</p> <p>(h) Other persons authorized or under obligation to dispose of the body.</p> <p>II. An anatomical gift shall not be made by a person listed in paragraph I if:</p> <p>(a) A person in a prior class is available at the time of death to make an anatomical gift;</p> <p>(b) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or</p> <p>(c) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.</p>
<p><b>291-A:10 Manner of Making, Amending, or Revoking Anatomical Gift of Decedent's Body or Part.</b></p> <p>I. A person authorized to make an anatomical gift under RSA 291-A:9 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.</p> <p>II. Subject to paragraph III, an anatomical gift by a person authorized under RSA 291-A:9 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under RSA 291-A:9 may be:</p> <p>(a) Amended only if a majority of the</p>	<p><b><u>291-A:4 Making, Revoking, and Objecting to Anatomical Gifts, by Others.</u></b></p> <p>III. An anatomical gift by a person authorized under paragraph I shall be made by:</p> <p>(a) A document of gift signed by the person; or</p> <p>(b) The person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.</p> <p>IV. An anatomical gift by a person authorized under paragraph I shall be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, or their designee, or eye procurement technician removing the part knows of the revocation.</p>

<p>reasonably available members agree to the amending of the gift; or</p> <p>(b) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.</p> <p>III. A revocation under paragraph II is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.</p>	
<p><b>291-A:11 Persons that May Receive an Anatomical Gift; Purpose of Anatomical Gift.</b></p> <p>I. An anatomical gift may be made to the following persons named in the document of gift:</p> <p>(a) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;</p> <p>(b) Subject to paragraph II, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or</p> <p>(c) An eye bank or tissue bank.</p> <p>II. If an anatomical gift to an individual under subparagraph I(b) cannot be transplanted into the individual, the part passes in accordance with paragraph VII in the absence of an express, contrary indication by the person making the anatomical gift.</p> <p>III. If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in paragraph I but identifies the purpose for which an anatomical gift may be used, the following rules apply:</p> <p>(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.</p> <p>(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.</p> <p>(c) If the part is an organ and the gift is for the</p>	<p><b><u>291-A:7 Persons Who May Become Donees; Purposes for Which Anatomical Gifts May be Made.</u></b></p> <p>I. The following persons may become donees of anatomical gifts for the purposes stated:</p> <p>(a) A hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;</p> <p>(b) An accredited medical or dental school, college, or university for education, research, or advancement of medical or dental science; or</p> <p>(c) A designated individual for transplantation or therapy needed by that individual.</p> <p>II. An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.</p> <p>III. If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under <u>RSA 291-A:4, 1</u>, the donee shall not accept the anatomical gift.</p>

purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

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

IV. For the purpose of paragraph III, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable for those purposes. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

V. If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in paragraph I and does not identify the purpose of the gift, the gift passes in accordance with paragraph VII and the parts must be used for transplantation or therapy if suitable and if not suitable for those purposes, may be used for research or education.

VI. If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift passes in accordance with paragraph VII and the parts shall be used for transplantation or therapy if suitable and if not suitable for those purposes, may be used for research or education.

VII. For purposes of paragraphs II, III, and VI the following rules shall apply:

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

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

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

VIII. An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subparagraph I(b), passes to the organ procurement organization as custodian of the organ.

IX. If an anatomical gift does not pass pursuant

to paragraphs I-VIII or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

X. A person may not accept an anatomical gift if the person knows that the gift was not effectively made under RSA 291-A:5 or RSA 291-A:10 or if the person knows that the decedent made a refusal under RSA 291-A:7 that was not revoked. For purposes of the paragraph, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

XI. Except as otherwise provided in subparagraph I(b), nothing in this chapter shall affect the allocation of organs for transplantation or therapy.

**291-A:12 Search and Notification.**

I. The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(a) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(b) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

II. If a document of gift or a refusal to make an anatomical gift is located by the search required by subparagraph I(a) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

III. A person shall not be subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

**291-A:6 Required Request; Search and Notification.**

I. [Repealed.]

II. If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, a person designated by the hospital, which may include a procurement organization representative, shall, unless the attending physician determines otherwise, discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to RSA 291-A:4, I. The request shall be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in RSA 291-A:7. An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made. The commissioner of health and human services, in consultation with procurement organizations, and the New Hampshire Hospital Association, shall adopt rules, under RSA 541-A, to implement this paragraph.

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

(a) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding an individual who the searcher believes is dead or near death; and

(b) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available

	<p>any other source of that information.</p> <p>IV. If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subparagraph III(a), and the individual or body to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the document or other evidence shall be sent to the hospital.</p> <p>V. If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to <u>RSA 291-A:4</u>, I, or a release and removal of a part has been permitted pursuant to <u>RSA 291-A:5</u>, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.</p> <p>VI. A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.</p>
<p><b>291-A:13 Delivery of Document of Gift Not Required; Right to Examine.</b></p> <p>I. A document of gift need not be delivered during the donor's lifetime to be effective.</p> <p>II. Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under RSA 291-A:11.</p>	<p><b><u>291-A:8 Delivery of Document of Gift.</u></b></p> <p>I. Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.</p> <p>II. If an anatomical gift is made to a designated donee, the document of gift, or a copy, shall be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.</p>
<p><b>291-A:14 Rights and Duties of Procurement Organization and Others.</b></p> <p>I. When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the New Hampshire donor registry and any other donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.</p> <p>II. A procurement organization shall be allowed reasonable access to information in the records of the department of motor vehicles through the New Hampshire donor registry pursuant to RSA 291-A:20 to ascertain whether an individual at or near death is a donor.</p>	<p><b><u>291-A:9 Rights and Duties at Death.</u></b></p> <p>I. Rights of a donee created by an anatomical gift are superior to rights of others except with respect to autopsies under <u>RSA 291-A:12</u>, II. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.</p> <p>II. The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may</p>



III. When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to assess the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to maintain the potential medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

IV. Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under RSA 291-A:11 may conduct any reasonable examination necessary to assess the medical suitability of the body or part for its intended purpose.

V. Unless prohibited by law other than this chapter, an examination under paragraphs III or IV may include an examination of all medical and dental records of the donor or prospective donor.

VI. Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

VII. Upon referral by a hospital under paragraph 1, a procurement organization shall make a reasonable search for any person listed in RSA 291-A:9 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

VIII. Subject to RSA 291-A:11 and RSA 291-A:22, the rights of the person to which a part passes under RSA 291-A:11 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this act, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under RSA 291-A:11, upon the death of the

participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to RSA 291-A:3, IV.

III. If there has been an anatomical gift, an appropriate physician or surgeon, or their designee, may remove any donated parts and an eye procurement technician may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon. If there has been an anatomical gift, the donated parts may be removed, after determination of death, by a person other than a physician or surgeon who attended the donor at death or determined the time of death.

**291-A:12 Examination; Autopsy; Liability.**

I. An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

II. The provisions of this chapter are subject to the laws of this state governing autopsies.

<p>donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.</p> <p>IX. Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.</p> <p>X. A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.</p>	
<p>291-A:15 Coordination of Procurement and Use. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.</p>	<p><u>291-A:10 Coordination of Procurement and Use.</u></p> <p>Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.</p>
<p>291-A:16 Sale or Purchase of Parts Prohibited.</p> <p>I. Except as otherwise provided in paragraph II, a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a felony and, notwithstanding RSA 651:2, upon conviction shall be subject to a fine not exceeding \$50,000 or imprisonment not exceeding 5 years, or both.</p> <p>II. A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.</p>	<p><u>291-A:11 Sale or Purchase of Parts Prohibited.</u></p> <p>I. A person shall not knowingly, for valuable consideration, purchase or sell a part, if removal of the part occurs or is intended to occur after the death of the decedent.</p> <p>II. Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.</p> <p>III. A person who violates this section is guilty of a felony and, notwithstanding <u>RSA 651:2</u>, upon conviction is subject to a fine not exceeding \$50,000 or imprisonment not exceeding 5 years, or both.</p>
<p>291-A:17 Other Prohibited Acts. A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or . . . obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a felony and upon conviction shall be subject to a fine not exceeding \$50,000 or imprisonment not exceeding 5 years, or both.</p>	
<p>291-A:18 Immunity.</p> <p>I. A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, shall not be liable for the act in a civil action, criminal prosecution, or administrative proceeding. Acting consistent with a document of gift shall be prima facie evidence of good faith.</p> <p>II. Neither the person making an anatomical gift nor the donor's estate shall be liable for any injury or damage that results from the making</p>	<p><u>291-A:12 Examination; Autopsy; Liability.</u></p> <p>III. A hospital, physician, surgeon, medical examiner, funeral director, eye procurement technician, procurement organization, or person acting on behalf of one of the preceding, who acts in accordance with this chapter or with the applicable anatomical gift law of another state or attempts in good faith to do so, is not liable for that act in a civil action or criminal proceeding.</p> <p>IV. An individual who makes an anatomical gift pursuant to <u>RSA 291-A:3</u> or <u>RSA 291-A:4</u> and the individual's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift.</p>

<p>or use of the gift.</p> <p>III. In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in RSA 291-A:9, I relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.</p>	
<p>291-A:19 Law Governing Validity; Choice of Law as to Execution of Document of Gift; Presumption of Validity.</p> <p>I. A document of gift is valid if executed in accordance with:</p> <p>(a) This chapter;</p> <p>(b) The laws of the state or country where it was executed; or</p> <p>(c) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.</p> <p>II. If a document of gift is valid under this section, the law of this state shall govern the interpretation of the document of gift.</p> <p>III. A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.</p>	
<p>291-A:20 Donor Registry.</p> <p>I. A donor registry shall:</p> <p>(a) Provide a database that allows an individual who has made an anatomical gift to be included in the donor registry;</p> <p>(b) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made an anatomical gift; and</p> <p>(c) Be accessible for purposes of subparagraphs (a) and (b) 7 days a week on a 24-hour basis.</p> <p>II. Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective</p>	<p><b>263:41 Donor Registry for Anatomical Gifts. (Please note: this statutory provision will be retained and not be replaced by HB 1430)</b></p> <p>I. The director shall provide to federally-designated organ procurement organizations serving the state access to names, dates of birth, addresses, and dates of registration of licensed drivers and individuals who obtain a nondriver's picture identification card who have registered with the division of motor vehicles as organ and tissue donors for the purpose of identifying those individuals as organ and tissue donors. Such access shall be provided only with the prior written consent of the donor and shall be provided in a manner and form to be determined by the director following consultation with such organizations, and shall include electronic transmission of initial information and periodic updating of information.</p> <p>II. The director shall cause a suitable decal or symbol to be affixed to the license or nondriver's picture identification card of a person who has registered with the division of motor vehicles as an organ and tissue donor under the</p>

<p>donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.</p> <p>III. This section shall not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry shall comply with paragraphs I and II.</p>	<p>provisions of this section.</p> <p>III. An anatomical gift shall not be executed by a minor unless written consent of the minor's parent or guardian is provided to the division of motor vehicles.</p>
<p><b>291-A:21 Cooperation Between Medical Examiner and Procurement Organization.</b></p> <p>I. The chief medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.</p> <p>II. If a medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the medical examiner and a post-mortem examination is going to be performed, unless the medical examiner denies recovery in accordance with RSA 291-A:22, the medical examiner or designee shall conduct a post-mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.</p> <p>III. A part may not be removed from the body of a decedent under the jurisdiction of a medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This paragraph does not preclude a medical examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the medical examiner.</p>	<p><b><u>291-A:5 Authorization by Medical Examiner or Funeral Director.</u></b></p> <p>I. The medical examiner shall release and permit the removal of a part from a body within that official's custody, for transplantation or therapy, if:</p> <p>(a) The official has received a request for the part from a hospital, physician, surgeon, or procurement organization;</p> <p>(b) The official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in <u>RSA 291-A:4</u>, I of their option to make, or object to making, an anatomical gift;</p> <p>(c) The official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in <u>RSA 291-A:4</u>, I;</p> <p>(d) The removal will be by a physician, or surgeon, or their designee; but in the case of eyes, by one of them or by an eye procurement technician;</p> <p>(e) The removal will not interfere with any autopsy or investigation;</p> <p>(f) The removal will be in accordance with accepted medical standards; and</p> <p>(g) Cosmetic restoration will be done, if appropriate.</p> <p>II. If the body is not within the custody of the medical examiner, the funeral director shall release and permit the removal of any part from a body in the funeral director's custody, pursuant to <u>RSA 291-A:4</u>, I(h), for transplantation or therapy if the requirements of paragraph I are met.</p> <p>III. A medical examiner or funeral director releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.</p>

291-A:22 Facilitation of Anatomical Gift From Decedent Whose Body is Under Jurisdiction of Medical Examiner.

I. Upon request of a procurement organization, a medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the medical examiner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the medical examiner only if relevant to transplantation or therapy.

II. The medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner which the medical examiner determines may be relevant to the investigation.

III. A person that has any information requested by a medical examiner pursuant to paragraph II shall provide that information as expeditiously as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

IV. If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the medical examiner and a post-mortem examination shall not be required, or the medical examiner determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

V. If an anatomical gift of a part from the decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner initially believes that the recovery of the part could interfere with the

post-mortem investigation into the decedent's cause or manner of death, the medical examiner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the medical examiner may allow the recovery.

VI. Following the consultation under paragraph V, in the absence of mutually agreed-upon protocols to resolve conflict between the medical examiner and the procurement organization, if the medical examiner intends to deny recovery, the medical examiner or designee, at the request of the procurement organization, shall attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part. During the removal procedure, the medical examiner or designee may allow recovery by the procurement organization to proceed, or, if the medical examiner or designee reasonably believes that the part may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.

VII. If the medical examiner or designee denies recovery under paragraph VI, the medical examiner or designee shall:

- (a) Explain in a record the specific reasons for not allowing recovery of the part;
- (b) Include the specific reasons in the records of the medical examiner; and
- (c) Provide a record with the specific reasons to the procurement organization.

VIII. If the medical examiner or designee allows recovery of a part under paragraph IV, V, or VI, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the medical examiner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.

291-A:23 Honoring an Individual's Decision to Donate. A person's decision to make a donation of that person's own body, organ, or tissue after death shall be honored. In the absence of a revocation or amendment, health care providers and procurement organizations shall act in accordance with the donor's decision and may take appropriate actions to effect the anatomical gift.

<p>291-A:24 Uniformity of Application and Construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.</p>	<p><b><u>291-A:15 Uniformity of Application and Construction.</u></b></p> <p>This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. The probate court shall have jurisdiction for any actions under this chapter, except for those under <u>RSA 291-A:11</u>.</p>
<p>291-A:25 Relation to Electronic Signatures in Global and National Commerce Act. This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. section 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).</p>	
<p>2 Eye Procurement; Cross Reference Charge. Amend RSA 325:31-a to read as follows:</p> <p>325:31-a Eye Procurement Technician Qualification. No person shall perform eye tissue removal or processing pursuant to [<del>RSA 291-A:3, IV</del>] <i>RSA 291-A:11</i> unless such person has successfully completed a course of training acceptable to a procurement organization as defined in [<del>RSA 291-A:2, X</del>] <i>RSA 291-A:2, XX</i>. The procurement organization shall have the power to establish qualifications and terms for the successful completion of the course of training.</p>	
<p>3 Effective Date. This act shall take effect 60 days after its passage.</p>	
	<p><b><u>291-A:13 Transportation and Preservation.</u></b></p> <p>Notwithstanding any law or rule to the contrary, if a donee is an accredited medical or dental school and it accepts a gift of the entire body for the purposes of medical research and education, the school shall be responsible for all transportation arrangements and for all preservation procedures for such body. The preservation procedures shall be the responsibility of the donee institution and shall be conducted according to procedures in common use among American medical and dental schools. The provisions of RSA 325 shall not apply to this section.</p>
	<p><b><u>291-A:14 Release of Corneas for Transplantation; Liability.</u></b></p> <p>1. Upon request of a procurement organization, the chief medical examiner, or designee, may release the cornea of a decedent to a procurement organization under the following conditions:</p> <p>(a) The body of the decedent is under the jurisdiction of the chief medical examiner, in accordance with RSA 611 or RSA 611-A.</p>

	<p>(b) A period of one hour has elapsed after the chief medical examiner, or designee, has notified such procurement organization and the procurement organization has received notification that the cornea of the decedent is available for transplant, and during such period the procurement organization has made a good faith effort to notify decedent's spouse or next of kin that a transplant is proposed.</p> <p>(c) No objections to the donation were made known by the decedent prior to his death or by the decedent's spouse or next of kin or by an agent of the decedent to the chief medical examiner or designee.</p> <p>(d) The removal of the cornea for transplant will not alter the decedent's facial appearance.</p> <p>II. A log, available at the procurement organization, shall contain the time of the notification by the chief medical examiner, or designee.</p> <p>III. No medical examiner, physician, or procurement organization, acting under the provisions of this section, shall be liable in any criminal or civil action brought as a result of a release of the decedent's cornea if a good faith effort was made to notify decedent's spouse or next of kin of such transplant.</p>
	<p><b><u>291-A:16 Severability.</u></b></p> <p>If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.</p>



# New England Organ Bank

One Gateway Center, Suite 202  
Newton, MA 02458

24-hour number: 800/446-NEOB  
Office number: 617/244-8000  
Fax number: 617/244-8755

April 20, 2010

Senator Kathleen G. Sgambati  
Chairperson  
Health and Human Services  
New Hampshire Senate  
State House  
Concord, NH 03301

Dear Chairperson Sgambati:

I write in support of the House Bill 1430, AN ACT RELATIVE TO THE UNIFORM ANATOMICAL GIFT ACT.

HB1430 is an important update to New Hampshire's Uniform Anatomical Gift Act (UAGA). Previous versions of the UAGA (1968 and 1987) were adopted by New Hampshire and played a critical role in creating a system that allowed the people of New Hampshire to become organ and tissue donors and in making life-saving transplants available to those in need.

The new version of the UAGA as proposed would bring the state's existing statute up-to-date and would clarify the process by which individuals become donors. Thirty-nine states have adopted this revised UAGA language, including Maine and Rhode Island (it has also been introduced in Vermont and Connecticut).

Some key provisions of the revised UAGA are:

- Prioritizes "durable power of attorney for health care" as the top donation decision maker consistent with the agent's priority as decision maker in other health matters.
- Clarifies the consent process by enabling a "majority of a class" to decide.
- Harmonizes New Hampshire's Anatomical Gift Act with federal law, current technology and medical practice.
- The proposed amendments to the bill maintain the important provisions of existing New Hampshire law that are already working well (i.e. New Hampshire Donor Registry).

New Hampshire already has adopted some of the key provisions of the new UAGA in 2006



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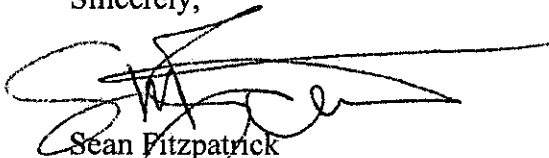
Accredited by:  
• Association of Organ Procurement Organizations  
• American Association of Tissue Banks

when it passed legislation creating the New Hampshire Donor Registry through the Division of Motor Vehicles which empowered individuals to make their own donation decision to have the decision respected upon their death.

The suggested amendments to the model law will help continue New Hampshire's efforts to make the act of becoming a donor easier for those who wish to make the decision to Donate Life.

Should you have any questions, please feel free to contact me.

Sincerely,



Sean Fitzpatrick  
Director, Public Affairs

# Speakers





# Voting Sheets

# Senate Health and Human Services Committee

## EXECUTIVE SESSION

Bill # HB 1430

Hearing date: 4-20-10

Executive session date: 4-20-10

Motion of: OTP

VOTE: 5-0

<u>Made by</u>	Sgambati <input checked="" type="checkbox"/>	<u>Seconded</u>	Sgambati <input checked="" type="checkbox"/>	<u>Reported</u>	Sgambati <input checked="" type="checkbox"/>
<u>Senator:</u>	Gilmour <input checked="" type="checkbox"/>	<u>by Senator:</u>	Gilmour <input type="checkbox"/>	<u>by Senator:</u>	Gilmour <input checked="" type="checkbox"/>
	Kelly <input type="checkbox"/>		Kelly <input type="checkbox"/>		Kelly <input type="checkbox"/>
	Gallus <input type="checkbox"/>		Gallus <input type="checkbox"/>		Gallus <input type="checkbox"/>
	Downing <input type="checkbox"/>		Downing <input type="checkbox"/>		Downing <input type="checkbox"/>

Motion of: \_\_\_\_\_

VOTE: \_\_\_\_\_

<u>Made by</u>	Sgambati <input type="checkbox"/>	<u>Seconded</u>	Sgambati <input type="checkbox"/>	<u>Reported</u>	Sgambati <input type="checkbox"/>
<u>Senator:</u>	Gilmour <input type="checkbox"/>	<u>by Senator:</u>	Gilmour <input type="checkbox"/>	<u>by Senator:</u>	Gilmour <input type="checkbox"/>
	Kelly <input type="checkbox"/>		Kelly <input type="checkbox"/>		Kelly <input type="checkbox"/>
	Gallus <input type="checkbox"/>		Gallus <input type="checkbox"/>		Gallus <input type="checkbox"/>
	Downing <input type="checkbox"/>		Downing <input type="checkbox"/>		Downing <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Sgambati, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Gilmour, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Kelly	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Gallus	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Downing	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*Amendments: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Committee Report



STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: April 20, 2010

THE COMMITTEE ON Health and Human Services  
to which was referred House Bill 1430

AN ACT                    relative to the uniform anatomical gift act.

Having considered the same, the committee recommends that the Bill:  
**OUGHT TO PASS**

BY A VOTE OF:    5-0

AMENDMENT #        s

Senator Peggy Gilmour  
For the Committee

Deb Chroniak 271-3096

## New Hampshire General Court - Bill Status System

**Docket of HB1430**

Docket Abbreviations

**Bill Title:** relative to the uniform anatomical gift act.*Official Docket of HB1430:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
12/10/2009	H	Introduced 1/6/2010 and Referred to Health, Human Services and Elderly Affairs; <b>HJ 6</b> , PG.239
01/06/2010	H	Public Hearing: 1/28/2010 1:00 PM LOB 205
01/20/2010	H	Executive Session: 2/9/2010 1:45 PM LOB 205
02/09/2010	H	Committee Report: Ought to Pass for Feb 17 CC (Vote 18-0); <b>HC 14</b> , PG.590
02/17/2010	H	Ought to Pass: MA VV; <b>HJ 18</b> , PG.959
03/24/2010	S	Introduced and Referred to Health and Human Services; <b>SJ 11</b> , Pg.263
04/14/2010	S	Hearing: April 20, 2010, Room 103, State House, 9:00 a.m.; <b>SC16</b>
04/21/2010	S	Committee Report: Ought to Pass 4/28/10; <b>SC17</b>
04/28/2010	S	Ought to Pass, MA, VV; OT3rdg; <b>SJ 16</b> , Pg.347
04/28/2010	S	Passed by Third Reading Resolution; <b>SJ 16</b> , Pg.354
05/13/2010	H	Enrolled; <b>HJ 42</b> , PG.2153
05/13/2010	S	Enrolled
06/03/2010	H	Signed by the Governor 06/01/2010; Effective 07/31/2010; Chapter 0111

NH House

NH Senate

Contact Us

*New Hampshire General Court Information Systems  
107 North Main Street - State House Room 31, Concord NH 03301*

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

HB 1430 ORIGINAL REFERRAL \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: \_\_\_\_\_

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

\_\_\_\_ - AMENDMENT # \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
\_\_\_\_ - AMENDMENT # \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED \_\_\_\_\_ AS AMENDED BY THE HOUSE  
 FINAL VERSION \_\_\_\_\_ AS AMENDED BY THE SENATE

\_\_\_\_ PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [ a thru g or a, b, c, d] here: \_\_\_\_\_

EXECUTIVE SESSION REPORT

\_\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):  
\_\_\_\_\_

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

8-5-10

  
COMMITTEE SECRETARY