

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill in section 2 on page 10 by inserting after the first indented paragraph and before chapter 710-B the following:

Maine Prefatory Note

Maine adopted the 1968 Uniform Anatomical Gift Act in 1969, and declined to adopt the 1987 revision. Since 1969, the law has been amended to carry out necessary updates although a comprehensive review has not been undertaken. The 2008 enactment is based on the 2006 Revised Uniform Anatomical Gift Act, and contains several amendments to address specific areas in which it is important to make changes to be consistent with Maine laws and practices. Many of the most significant departures from the Uniform Act are noted in Maine Comments provided for the appropriate sections. Some Uniform Comments may not accurately portray Maine law as it was prior to the adoption of this Act.'

Amend the bill in section 2 by striking out all of §2942 and inserting the following:

§ 2942. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agent. "Agent" means an individual:

A. Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

B. Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

2. Anatomical gift. "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purposes of transplantation, therapy, research or education.

3. Chief Medical Examiner. "Chief Medical Examiner" means the Office of the Chief Medical Examiner within the Office of the Attorney General.

4. Decedent. "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. "Decedent" includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

5. Disinterested witness. "Disinterested witness" means a witness other than the spouse, registered domestic partner, 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 and who is familiar with the individual's personal values.

"Disinterested witness" does not include a person to which an anatomical gift could pass under section 2951.

6. Document of gift. "Document of gift" means a donor card, advance directive or other record used to make an anatomical gift. "Document of gift" also means inclusion in a donor registry.

7. Donor. "Donor" means an individual whose body or part is the subject of an anatomical gift.

8. Donor registry. "Donor registry" means the Maine Organ Donor Registry maintained under Title 29-A, section 1402-A as well as any other electronic database that identifies donors and complies with section 2958.

9. Driver's license. "Driver's license" means a license or permit issued by the Secretary of State to operate a vehicle whether or not conditions are attached to the license or permit.

10. Eye bank. "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.

11. Guardian. "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health and welfare of an individual. "Guardian" does not include a guardian ad litem.

12. Hospital. "Hospital" means a facility licensed as a hospital under chapter 405 or the law of any state or a facility operated as a hospital by the United States, a state or a subdivision of a state.

13. Identification card. "Identification card" means a nondriver identification card issued by the Secretary of State under Title 29-A, section 1410.

14. Know. "Know" means to have actual knowledge.

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

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

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

18. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.

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

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

21. Prospective donor. "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. "Prospective donor" does not include an individual who has made a refusal that is known by the procurement organization.

22. Reasonably available. "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.

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

24. Record. "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.

25. Recovery agency. "Recovery agency" means an eye bank, organ procurement organization, tissue bank, educational institution or research organization that participates in or facilitates the execution of an anatomical gift.

26. Refusal. "Refusal" means a record created under section 2947 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

27. Registered domestic partner. "Registered domestic partner" means an individual registered as a domestic partner under section 2710, subsection 3.

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

A. To execute or adopt a tangible symbol; or

B. To attach or logically associate with the record an electronic symbol, sound or process.

29. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

30. Technician. "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. "Technician" includes an enucleator.

31. Tissue. "Tissue" means a portion of the human body other than an organ or an eye. "Tissue" does not include blood unless the blood is donated for purposes of research or education.

32. Tissue bank. "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.

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

Amend the bill in section 2 on page 20 by inserting after the 2nd indented paragraph and before §2943 the following:

Maine Comment (§2942)

The Maine enactment adds definitions of "Chief Medical Examiner," "recovery agency" and "registered domestic partner." It also makes changes consistent with Maine's treatment of donor registries and nondriver identification cards.'

Amend the bill in section 2 in §2945 in subsection 1 by striking out all of paragraph A (page 22, lines 23 and 24 in L.D.) and inserting the following:

'A. By authorizing inclusion in the donor registry;'

Amend the bill in section 2 in §2945 in subsection 2 by striking out all of the first paragraph (page 22, lines 29 to 34 in L.D.) and inserting the following:

'2. Donor or other authorized person. A donor or other person authorized to make an anatomical gift under section 2944 may make a gift by a donor card, advance directive or other record signed by the donor or other person making the gift authorizing inclusion in the 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 the other person and must:'

Amend the bill in section 2 on page 26 by inserting before §2946 the following:

Maine Comment (§2945)

The Maine enactment makes changes consistent with Maine's treatment of donor registries and nondriver identification cards.'

Amend the bill in section 2 in §2949 by striking out all of subsection 1 (page 34, lines 25 to 37 and page 35, lines 1 to 3 in L.D.) and inserting the following:

'1. Gift by members of class; priority. Subject to subsections 2 and 3 and unless barred by subsection 4, an anatomical gift of a decedent's body or part for purposes of transplantation, therapy,

research or education may be made, in the order of priority listed, by any member of the following classes of persons who is reasonably available:

- A. An agent of the decedent at the time of death who could have made an anatomical gift under section 2944, subsection 2 immediately before the decedent's death;
- B. The spouse of the decedent;
- C. The registered domestic partner of the decedent;
- D. Adult children of the decedent;
- E. Parents of the decedent;
- F. Adult siblings of the decedent;
- G. Adult grandchildren of the decedent;
- H. Grandparents of the decedent;
- I. An adult who exhibited special care and concern for the decedent who is familiar with the decedent's personal values;
- J. The person or persons acting as the guardian of the person of the decedent at the time of death; and
- K. Any other person having the authority to dispose of the decedent's body.'

Amend the bill in section 2 in §2949 in subsection 2 in the 2nd line (page 35, line 5 in L.D.) by striking out the following: "A, C, D, E, F, G or I" and inserting the following: 'A, D, E, F, G, H or J'

Amend the bill in section 2 on page 37 by inserting after the last indented paragraph the following:

Maine Comment (§2949)

The Maine enactment revises the list of who may make an anatomical gift to include the decedent's registered domestic partner and to clarify when a nonrelative may be qualified to make such a gift.'

Amend the bill in section 2 in §2950 by inserting after subsection 3 the following:

4. Requesting consent. Consent for an anatomical gift by a recovery agency under section 2949 must be documented in writing or, if secured in a telephone conversation, in a suitable recording, must disclose in plain language the specific tissue, organ or body part being donated and the purpose for which the anatomical gift will be used and must comply in all respects with rules regarding consent requirements for anatomical gifting adopted by the department pursuant to subsection 5.

5. Rulemaking. The department, after consultation with the Office of the Attorney General, shall adopt rules to implement this section. The rules must provide specific requirements for all recovery

agencies, require federally recognized recovery agencies to demonstrate compliance with applicable federal standards governing consent to anatomical gifts and require all other recovery agencies that do not operate under federal regulation to demonstrate adherence to the consent requirements of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

Amend the bill in section 2 on page 39 by inserting after the 2nd indented paragraph and before §2951 the following:

Maine Comment (§2950)

Currently organ procurement organizations are subject to Centers for Medicare and Medicaid Services (CMS) regulatory oversight regarding identification of potential donors and confirming the donor's consent or requesting consent of family members and other surrogates for anatomical gifting. See 42 CFR §§486.342 and 486.344. Anatomical gifts intended for transplantation and therapy that are coordinated through organ procurement organizations are subject to the federal regulatory requirements. Tissues that are donated for purposes of transplant and therapy are also subject to federal Food and Drug Administration regulations geared primarily to product safety. Organs that are donated for transplant or therapy are subject to CMS and the United Network for Organ Sharing (UNOS) oversight.

Anatomical gifts from deceased donors for research and scientific purposes are not directly subject to these federal regulations. Given the absence of federal regulatory oversight in this area, the Maine enactment is intended to allow the Department of Health and Human Services, upon consultation with the Office of the Attorney General, to adopt rules to ensure that a recovery agency secures appropriate informed consent regarding anatomical gifting if it coordinated outside of the federally regulated organizations that recover anatomical gifts for transplantation.'

Amend the bill in section 2 in §2951 by striking out all of subsections 4 and 5 (page 40, lines 13 to 20 in L.D.) and inserting the following:

4. No named recipient or purpose. 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 subsection 1 and does not identify the purpose of the gift, the gift passes in accordance with subsection 6 and the decedent's parts must be used for transplantation or therapy, if suitable, and, if not suitable, the gift may be used for research or education.

5. General intent. 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 subsection 6 and the decedent's parts must be used for transplantation or therapy, if suitable, and, if not suitable, the gift may be used for research or education.'

Amend the bill in section 2 in §2951 in subsection 6 in the 2nd line (page 40, line 22 in L.D.) by striking out the following: "3 and 4" and inserting the following: '3, 4 and 5'

Amend the bill in section 2 on page 43 by inserting after the 4th indented paragraph and before §2952 the following:

Maine Comment (§2951)

The Maine enactment clarifies how an anatomical gift may be used if the anatomical gift does not name a person as the recipient or a specific purpose for the gift. The same clarification is included when a document of gift expresses general intent without specifics.'

Amend the bill in section 2 in §2954 in subsection 2 in the first line (page 45, line 20 in L.D.) by striking out the following: "**Secretary of State**" and inserting the following: '**donor registry**'

Amend the bill in section 2 in §2954 in subsection 2 in the last line (page 45, line 22 in L.D.) by striking out the following: "Secretary of State" and inserting the following: 'donor registry'

Amend the bill in section 2 in §2954 in subsection 3 in the 3rd line (page 45, line 25 in L.D.) by striking out the following: "ensure" and inserting the following: 'assess'

Amend the bill in section 2 in §2954 in subsection 3 in the 3rd line from the end (page 45, line 28 in L.D.) by striking out the following: "ensure the" and inserting the following: 'maintain the potential'

Amend the bill in section 2 in §2954 in subsection 4 in the 3rd line (page 45, line 33 in L.D.) by striking out the following: "ensure" and inserting the following: 'assess'

Amend the bill in section 2 in §2954 in subsection 9 in the first line (page 46, line 9 in L.D.) by striking out the following: "2963" and inserting the following: '2961'

Amend the bill in section 2 on page 47 by inserting after the last indented paragraph the following:

Maine Comment (§2954)

The Maine enactment clarifies references to the donor registry and the assessment of medical suitability of parts that are or could be the subject of an anatomical gift.'

Amend the bill in section 2 by striking out all of §2956 (page 48, lines 20 to 27 in L.D.)

Amend the bill in section 2 on page 48 by striking out all of lines 28 to 34.

Amend the bill in section 2 by striking out all of §2957 (page 49, lines 1 to 4 in L.D.)

Amend the bill in section 3 on page 49 by striking out all of lines 5 to 17 in L.D.

Amend the bill in section 2 in §2958 in subsection 3 in the 3rd line (page 49, line 28 in L.D.) by striking out the following: "G and H" and inserting the following: 'G, H and I'

Amend the bill in section 2 on page 50 by inserting after the 4th indented paragraph and before §2959 the following:

Maine Comment (§2956)

The Maine enactment revises the cross-references to the list of decision makers in §2949 to be consistent with the list in that section.’

Amend the bill in section 2 by striking out all of §2960 and inserting the following:

‘§ 2960. Donor registry

1. Elements of donor registry. A donor registry must:

A. Provide a database that allows an individual who has made an anatomical gift to be included on the donor registry. The Maine Organ Donor Registry maintained under Title 29-A, section 1402-A must comply with this paragraph beginning January 1, 2010;

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 prospective donor, whether the donor or prospective donor has made an anatomical gift; and

C. Be accessible for purposes of paragraph B 7 days a week on a 24-hour basis.

2. Nondisclosure of personally identifiable information. 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 donor or the 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 an anatomical gift.

3. Other registries. This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the State. A registry under this subsection must comply with this chapter.

4. Certification of donor registries. Prior to the establishment of a nongovernmental donor registry, the donor registry must be certified by the department to ensure the registry operates in accordance with the standards and requirements of this chapter except that a donor registry established by an organ procurement organization designated by and in good standing with the United States Department of Health and Human Services is exempt from the certification requirement.

5. Rulemaking. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.’

Amend the bill in section 2 on page 53 by inserting after the 4th line and before §2961 the following:

Maine Comment (§2958)

Currently the only donor registry operating in the State of Maine is the registry operated by the Secretary of State pursuant to the Maine Revised Statutes, Title 29-A, section 1402-A. It is recognized that new electronically accessible donor registries may be developed by nongovernmental entities in Maine to expedite the processing of anatomical gifts. A requirement that any registry be certified by the Department of Health and Human Services will ensure that any such registry be operated in a manner consistent with the design of the Revised Uniform Anatomical Gift Act.'

Amend the bill in section 2 by striking out all of §2961 (page 53, lines 5 to 17 in L.D.) and inserting the following:

§ 2961. Honoring decision of donors

A person's decision to make a donation of that person's own body, organ or tissue after death must be honored. In the absence of a revocation or amendment under section 2946, health care providers and procurement organizations shall act in accordance with the donor's decision and may take appropriate actions to effect the gift.'

Amend the bill in section 2 on page 53 by inserting after the last indented paragraph the following:

Maine Comment (§2959)

The Maine enactment replaces the Section 21 of the Revised Uniform Anatomical Gift Act with language consistent with Maine law: the Maine Revised Statutes, Title 22, section 2911, most recently amended by Public Law 2005, chapter 208.'

Amend the bill in section 2 in §2962 by striking out all of subsection 1 (page 54, lines 3 to 5 in L.D.) and inserting following:

1. Cooperation to maximize opportunity. The Chief Medical Examiner shall, consistent with the requirements of chapter 711, cooperate with a procurement organization to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research or education.'

Amend the bill in section 2 in §2962 in subsection 2 in the 4th line (page 54, line 9 in L.D.) by striking out the following: "is going to" and inserting the following: 'may'

Amend the bill in section 2 in §2962 in subsection 2 in the 5th line (page 54, line 10 in L.D.) by striking out the following: "2963" and inserting the following: '2961'

Amend the bill in section 2 in §2962 in subsection 2 in the 3rd line from the end (page 54, line 11 in L.D.) by inserting after the following: "shall" the following: 'undertake reasonable efforts to'

Amend the bill in section 2 on page 54 by inserting before §2963 the following:

Maine Comment (§2960)

The Maine enactment makes revisions consistent with the authority of the Chief Medical Examiner.’

Amend the bill in section 2 by striking out all of §2963 and inserting the following:

§ 2963. Facilitation of anatomical gift from decedent in Chief Medical Examiner cases

1. Release of information. Subject to section 3022, subsections 8 and 13, upon request of a procurement organization, the Chief 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 Chief Medical Examiner pursuant to chapter 711. If the decedent's body or part is medically suitable for transplantation, therapy, research or education, the Chief Medical Examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the Chief Medical Examiner only if relevant to transplantation, therapy or with the express authorization of the Chief Medical Examiner, if relevant to research.

2. Medicolegal examination. The Chief 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 prospective donor or a donor whose body is under the jurisdiction of the Chief Medical Examiner that the Chief Medical Examiner determines may be relevant to the investigation.

3. Provision of information. A person that has any information requested by the Chief Medical Examiner pursuant to subsection 2 shall provide that information as expeditiously as possible to allow the Chief Medical Examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for purposes of transplantation, therapy, research or education.

4. Removal not interfering with examination. If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the Chief Medical Examiner and a postmortem examination is not required, or the Chief Medical Examiner determines that a postmortem 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 Chief Medical Examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for purposes of transplantation, therapy, research or education.

5. Removal may interfere with examination. If an anatomical gift of a part from a decedent under the jurisdiction of the Chief Medical Examiner has been or might be made, but the Chief Medical Examiner believes that the recovery of the part may interfere with the postmortem investigation as required by chapter 711, the Chief Medical Examiner shall make a reasonable effort to consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery in an effort to facilitate recovery consistent with discharge of the obligations of the Chief Medical Examiner.

6. If recovery denied. If the Chief Medical Examiner or designee denies recovery, the Chief Medical Examiner or designee shall provide the specific reasons for not allowing recovery of the part to the procurement organization.

7. Record provided to Chief Medical Examiner. If the Chief Medical Examiner or designee allows recovery of a part under subsection 4 or 5, upon request the procurement organization shall cause the physician or technician who removes the part to provide the Chief 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 postmortem examination.'

Amend the bill in section 2 on page 56 by inserting before §2964 the following:

Maine Comment (§2961)

While the National Association of Medical Examiners does have a position paper encouraging organ and tissue donation, the organization issued this statement regarding the UAGA in February 2007, specifically for members to provide to their legislatures:

The National Association of Medical Examiners wholeheartedly supports and encourages organ and tissue donation. However, NAME cannot endorse the Revised Uniform Anatomical Gift Act (2006) in its present form for the following reasons: 1. The stated mandate in the act frequently contradicts the existing statutory mandate of the Medical Examiner/Coroner within particular jurisdictions. 2. The act as written does not distinguish recovery for life-saving transplant from recovery for research and education. 3. The act as written does not distinguish between organs and tissues. 4. The procedure for legitimate denial is onerous and unreasonable.

The Maine Chief Medical Examiner (CME) participated in the Maine Anatomical Gift Act Committee. The initial language in the UAGA is amended to satisfactorily maintain the statutory jurisdiction of the CME and to provide for a reasonable method to consult with organ procurement organizations on any potential denials of requested organs and tissues.

§ 2964. Registration of recovery agencies

1. Registration. Except as provided under subsection 2, a recovery agency must be registered by the department prior to requesting, receiving or otherwise participating in an anatomical gift under this chapter.

2. Rulemaking. The department shall adopt rules governing the registration of recovery agencies. The rules must provide for exemptions for organ procurement organizations designated by the United States Department of Health and Human Services and tissue banks registered with the United States Department of Health and Human Services, Food and Drug Administration that are in good standing with their respective federal oversight agencies. The rules may provide for exemptions for other recovery agencies if such agencies operate in full compliance with this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Fees. The department may charge reasonable registration fees to defray administrative costs in administering this section.

Amend the bill in section 2 in §2966 in the first paragraph in the first line (page 56, line 34 in L.D.) by striking out the following: "2008" and inserting the following: '2009'

Amend the bill by striking out all of sections 3 and 4 and inserting the following:

‘Sec. 3. 29-A MRSA §1402-A, sub-§1, as amended by PL 1997, c. 437, §36, is repealed.

Sec. 4. 29-A MRSA §1402-A, sub-§1-A is enacted to read:

1-A. Anatomical gifts. A licensee or, beginning January 1, 2010, a nondriver identification card holder under section 1410 may make an anatomical gift under Title 22, chapter 710-B during the process of obtaining and renewing a license or nondriver identification card. After January 1, 2010, a licensee or nondriver identification card holder may make an anatomical gift in the periods between license and nondriver identification card renewals by requesting that the licensee or nondriver identification card holder be included in or eliminated from the Maine Organ Donor Registry.

Sec. 5. 29-A MRSA §1402-A, sub-§2, as amended by PL 1997, c. 437, §36, is repealed.

Sec. 6. 29-A MRSA §1402-A, sub-§2-A is enacted to read:

2-A. Organ and tissue donor notation. The Secretary of State shall print the license or nondriver identification card with a distinctive code or notation indicating the licensee's or card holder's inclusion in the Maine Organ Donor Registry.

Sec. 7. 29-A MRSA §1402-A, sub-§4, ¶E, as amended by PL 2005, c. 208, §3, is further amended to read:

E. Notwithstanding Title 22, section 1711-C and any other provision of law to the contrary, a health care provider licensed in this State to provide primary health care shall provide information to a federally designated organ procurement organization regarding a patient who has indicated a willingness to become an organ donor under this section, Title 18-A, Article 5, Part 8 or Title 22, chapter ~~710~~710-B if such information is provided in accordance with professional standards applicable to organ donation.

Sec. 8. 29-A MRSA §1402-A, sub-§5, as enacted by PL 2003, c. 394, §4 and affected by §6, is amended to read:

5. Effect. An expression of willingness to make an anatomical gift under this section has the same effect as a designation under Title 18-A, Article 5, Part 8 or Title 22, chapter ~~710~~710-B. Revocation or suspension of the right to drive under this chapter does not affect the expressed willingness of a person to make an anatomical gift under this section.

Sec. 9. Effective date. That section of this Act that repeals the Maine Revised Statutes, Title 22, chapter 710 and those sections that amend Title 29-A, section 1402-A take effect January 1, 2009.’

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment makes the following revisions to the bill, the revised Uniform Anatomical Gift Act, to be consistent with other Maine laws and practices, including the Maine Organ Donor Registry currently maintained by the Secretary of State as related to information collected through the issuance of driver's licenses. Maine Comments are inserted where appropriate.

1. It adds definitions for "Chief Medical Examiner," "recovery agency" and "registered domestic partner."

2. It revises several definitions.

A. "Disinterested witness" is revised to include the registered domestic partner of the individual. The term is further revised to parallel the list of people who can consent to an anatomical gift after the individual's death.

B. "Document of gift" is amended to specifically include advance directives and the inclusion in a donor registry, and to delete reference to indications on driver's licenses or nondriver identification cards. This same change is made in other sections of the bill.

C. "Donor registry" is revised to specifically include the Maine Organ Donor Registry established by the Secretary of State.

D. "Hospital" is amended to include a cross-reference to the hospital licensing statute.

E. "Identification card" is clarified to mean a nondriver identification card issued by the Secretary of State under existing law.

F. "Prospective donor" is amended to clarify that the term does not include an individual who has made a refusal that is known by the procurement organization.

3. The manner in which an individual may make an anatomical gift before death is amended to be consistent with current Maine law: the specific reference to driver's licenses and nondriver identification cards is removed and a reference to the donor registry is substituted.

4. The list of people who may make an anatomical gift of a decedent's body or part is revised to insert the registered domestic partner in priority after the spouse of the decedent. This is consistent with current Maine law. The reference to an adult who exhibited special care and concern for the decedent is further limited to include only such an adult who is familiar with the decedent's personal values. The provision governing how a decision is made if more than one person exists in the class of decision makers is amended to be consistent with these changes. In addition, the immunity provisions are amended to be consistent with the revised list.

5. The provision delineating the process for the making, amending or revoking of an anatomical gift of a decedent's body or part is amended to require that consent for an anatomical gift by a recovery agency be documented in writing or in a suitable recording if consent was given in a telephone conversation. In addition, the Department of Health and Human Services, after consultation with the Office of the

Attorney General, will adopt rules to implement the new law. The rules are routine technical, and must cover specific requirements for all recovery agencies. Recovery agencies that are federally recognized must demonstrate compliance with applicable federal standards governing consent and recovery agencies that are not federally regulated must demonstrate adherence to the consent requirements.

6. This amendment provides that if an anatomical gift is made in a document that does not name the recipient of the gift and does not identify the purpose of the gift, the gift passes to the recipient specified in the law, and the decedent's parts must be used for transplantation or therapy if suitable; otherwise the parts may be used for research or education. The same holds true for a decedent's parts when the document of gift specifies only a general intent to make an anatomical gift.

7. The amendment revises the rights and duties of procurement organizations and others with regard to reasonable examinations to determine medical suitability and reasonable examinations after death. The purpose of the examinations is to assess the medical suitability of the body or part for its intended purpose. Measures necessary to maintain the potential medical suitability may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

8. The proposed criminal provisions for selling or purchasing body parts and for falsifying, forging, concealing, defacing or obliterating a document of gift, an amendment or a revocation are deleted. Currently Maine law already adequately covers the prohibited conduct.

9. The provisions regarding donor registries are amended to provide basic elements of a donor registry and to delete the authorization for the Department of Health and Human Services to establish or enter into a contract for the establishment of a donor registry. Starting January 1, 2010, the Maine Organ Donor Registry maintained by the Secretary of State will be required to comply with the database requirement that allows an individual to be included on the registry without relation to a driver's license or nondriver identification card. Prior to operation, a new donor registry must be certified by the Department of Health and Human Services as meeting the requirements of the law. The department may adopt routine technical rules to implement these provisions. An organ procurement organization designated by the United States Department of Health and Human Services and in good standing with that department is exempt from certification requirements.

10. The provision governing the honoring of decisions of donors is deleted from the bill.

11. The provisions governing the interaction between the Chief Medical Examiner and those responsible for identifying and recovering anatomical gifts is revised to be consistent with current Maine medical examiner laws.

12. This amendment includes a section new to the Revised Uniform Anatomical Gift Act concerning registration of recovery agencies. This amendment provides that a nonexempt recovery agency must be registered with the Department of Health and Human Services before it may request, receive or otherwise participate in an anatomical gift. Organ procurement organizations designated by the United States Department of Health and Human Services and tissue banks registered with the Food and Drug Administration are exempt as long as they are in good standing with their federal oversight agencies. The Department of Health and Human Services shall adopt rules to implement these provisions. The department may charge reasonable fees for registering the recovery agencies.

13. This amendment revises the current law concerning the Maine Organ Donor Registry maintained by the Secretary of State. Beginning January 1, 2010, a person being issued a state identification card may make an anatomical gift during the process of obtaining or renewing an identification card. That option is currently available for a person obtaining or renewing a driver's license. Beginning January 1, 2010, a licensee or nondriver identification card holder may request inclusion or deletion from the Maine Organ Donor Registry between renewals.

14. This amendment makes the Revised Uniform Anatomical Gift Act and the remaining portions of the bill take effect January 1, 2009.

FISCAL NOTE REQUIRED
(See attached)