

Senate Bill 405

By: Senators Balfour of the 9th, Douglas of the 17th, Murphy of the 27th, Cowser of the 46th, Hawkins of the 49th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to
 2 acquisition and loss of property, so as to provide for the enactment of the "Georgia Revised
 3 Uniform Anatomical Gift Act"; to repeal the "Georgia Anatomical Gift Act"; to provide for
 4 a short title; to provide for definitions; to provide for anatomical gifts; to provide for who
 5 may make an anatomical gift; to provide for the manner of making, amending, or revoking
 6 an anatomical gift; to provide for refusal to make an anatomical gift; to provide for
 7 effectiveness; to provide for search and notification; to provide for delivery of document; to
 8 provide for rights and duties of procurement organizations; to provide for coordination of
 9 procurement and use; to prohibit the sale or purchase of body parts; to provide for penalties;
 10 to provide for immunity; to provide for governing law; to provide for a donor registry; to
 11 provide for the effect of an anatomical gift on an advance directive for health care; to provide
 12 for cooperation between medical examiners and procurement organizations; to provide for
 13 facilitation of an anatomical gift from a decedent; to provide for applicability and statutory
 14 construction; to amend Article 6 of Chapter 12 of Title 16 of the Official Code of Georgia
 15 Annotated, relating to crimes and offenses relative to human body trafficking, so as to revise
 16 certain provisions relating to buying and selling the human body or parts; to amend Chapter
 17 23 of Title 31 of the Official Code of Georgia Annotated, relating to eye banks, so as to
 18 repeal a provision relating to removal of eye or corneal tissue by a coroner, medical
 19 examiner, or other individual; to amend the Official Code of Georgia Annotated, so as to
 20 revise various provisions for purposes of conformity; to provide for related matters; to repeal
 21 conflicting laws; and for other purposes.

22 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

23 **SECTION 1.**

24 Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to acquisition and
 25 loss of property, is amended by repealing Article 6, known as the "Georgia Anatomical Gift
 26 Act," and inserting in its place a new Article 6 to read as follows:

"ARTICLE 6

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44-5-140.

This article shall be known and may be cited as the 'Georgia Revised Uniform Anatomical Gift Act.'

44-5-141.

As used in this article, the term:

(1) 'Adult' means an individual who is at least 18 years of age.

(2) 'Agent' means an individual:

(A) Authorized to make health care decisions on the principal's behalf by an advance directive for health care or a durable 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.

(3) '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.

(4) '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 a fetus.

(5) '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. The term does not include a person to which an anatomical gift could pass under Code Section 44-5-149.

(6) '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 donor registry.

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

(8) 'Donor registry' means a data base that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) 'Driver's license' means a license or permit issued by the Department of Driver Services to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) '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' 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.

- 1 (12) 'Hospital' means a facility licensed as a hospital under the law of any state or a
2 facility operated as a hospital by the United States, a state, or a subdivision of a state.
- 3 (13) 'Identification card' means an identification card for persons without drivers'
4 licenses issued pursuant to Code Sections 40-5-100 through 40-5-104 by the Department
5 of Driver Services.
- 6 (14) 'Know' means to have actual knowledge.
- 7 (15) 'Minor' means an individual who is under 18 years of age.
- 8 (16) 'Organ procurement organization' means a person designated by the Secretary of the
9 United States Department of Health and Human Services as an organ procurement
10 organization.
- 11 (17) 'Parent' means a parent whose parental rights have not been terminated.
- 12 (18) 'Part' means an organ, an eye, or tissue of a human being. The term does not include
13 the whole body.
- 14 (19) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
15 limited liability company, association, joint venture, public corporation, government or
16 governmental subdivision, agency, or instrumentality, or any other legal or commercial
17 entity.
- 18 (20) 'Physician' means an individual authorized to practice medicine or osteopathy under
19 the law of any state.
- 20 (21) 'Procurement organization' means an eye bank, organ procurement organization, or
21 tissue bank.
- 22 (22) '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
24 for transplantation, therapy, research, or education. The term does not include an
25 individual who has made a refusal.
- 26 (23) '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
28 existing medical criteria necessary for the making of an anatomical gift.
- 29 (24) 'Recipient' means an individual into whose body a decedent's part has been or is
30 intended to be transplanted.
- 31 (25) '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 (26) 'Refusal' means a record created under Code Section 44-5-145 that expressly states
34 an intent to bar other persons from making an anatomical gift of an individual's body or
35 part.
- 36 (27) 'Sign' means, with the present intent to authenticate or adopt a record:
37 (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 (28) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the
4 United States Virgin Islands, or any territory or insular possession subject to the
5 jurisdiction of the United States.

6 (29) 'Technician' means an individual determined to be qualified to remove or process
7 parts by an appropriate organization that is licensed, accredited, or regulated under
8 federal or state law. The term includes an individual who is authorized to remove eyes,
9 known as an enucleator.

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

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

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

18 44-5-142.

19 Subject to Code Section 44-5-146, an anatomical gift of a donor's body or part may be
20 made during the life of the donor for the purpose of transplantation, therapy, research, or
21 education in the manner provided in Code Section 44-5-143 by:

22 (1) The donor, if the donor is an adult or if the donor is a minor and is:

23 (A) Emancipated; or

24 (B) Authorized under state law to apply for a driver's license because the donor is at
25 least 16 years of age;

26 (2) An agent of the donor, unless the advance directive for health care or durable power
27 of attorney for health care prohibits the agent from making an anatomical gift;

28 (3) A parent of the donor, if the donor is an unemancipated minor; or

29 (4) The donor's guardian.

30 44-5-143.

31 (a) A donor may make an anatomical gift:

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

34 (2) In a will;

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

3 (4) By granting power pursuant to a durable power of attorney for health care or advance
4 directive for health care under Chapter 32 of Title 31.

5 (5) As provided in subsection (b) of this Code section.

6 (b) A donor or other person authorized to make an anatomical gift under Code Section
7 44-5-142 may make a gift by a donor card or other record signed by the donor or other
8 person making the gift or by authorizing that a statement or symbol indicating that the
9 donor has made an anatomical gift be included on a donor registry. If the donor or other
10 person is physically unable to sign a record, the record may be signed by another individual
11 at the direction of the donor or other person and shall:

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

14 (2) State that it has been signed and witnessed as provided in paragraph (1) of this
15 subsection.

16 (c) Revocation, suspension, expiration, or cancellation of a driver's license or
17 identification card upon which an anatomical gift is indicated does not invalidate the gift.

18 (d) An anatomical gift made by will takes effect upon the donor's death whether or not the
19 will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

20 44-5-144.

21 (a) Subject to Code Section 44-5-146, a donor or other person authorized to make an
22 anatomical gift under Code Section 44-5-142 may amend or revoke an anatomical gift by:

23 (1) A record signed by:

24 (A) The donor;

25 (B) The other person; or

26 (C) Subject to subsection (b) of this Code section, another individual acting at the
27 direction of the donor or the other person if the donor or other person is physically
28 unable to sign; or

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

31 (b) A record signed pursuant to subparagraph (a)(1)(C) of this Code section shall:

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

34 (2) State that it has been signed and witnessed as provided in paragraph (1) of this
35 subsection.

1 (c) Subject to Code Section 44-5-146, a donor or other person authorized to make an
2 anatomical gift under Code Section 44-5-142 may revoke an anatomical gift by the
3 destruction or cancellation of the document of gift, or the portion of the document of gift
4 used to make the gift, with the intent to revoke the gift.

5 (d) A donor may amend or revoke an anatomical gift that was not made in a will by any
6 form of communication during a terminal illness or injury addressed to at least two adults,
7 at least one of whom is a disinterested witness.

8 (e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the
9 manner provided for amendment or revocation of wills under Chapter 4 of Title 53 or as
10 provided in subsection (a) of this Code section.

11 44-5-145.

12 (a) An individual may refuse to make an anatomical gift of the individual's body or part
13 by:

14 (1) A record signed by:

15 (A) The individual; or

16 (B) Subject to subsection (b) of this Code section, another individual acting at the
17 direction of the individual if the individual is physically unable to sign;

18 (2) The individual's will, whether or not the will is admitted to probate or invalidated
19 after the individual's death; or

20 (3) Any form of communication made by the individual during the individual's terminal
21 illness or injury addressed to at least two adults, at least one of whom is a disinterested
22 witness.

23 (b) A record signed pursuant to subparagraph (a)(1)(B) of this Code section shall:

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

26 (2) State that it has been signed and witnessed as provided in paragraph (1) of this
27 subsection.

28 (c) An individual who has made a refusal may amend or revoke the refusal:

29 (1) In the manner provided in subsection (a) of this Code section for making a refusal;

30 (2) By subsequently making an anatomical gift pursuant to Code Section 44-5-143 that
31 is inconsistent with the refusal; or

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

34 (d) Except as otherwise provided in subsection (h) of Code Section 44-5-146, in the
35 absence of an express, contrary indication by the individual set forth in the refusal, an

1 individual's unrevoked refusal to make an anatomical gift of the individual's body or part
2 bars all other persons from making an anatomical gift of the individual's body or part.

3 44-5-146.

4 (a) Except as otherwise provided in subsection (g) of this Code section and subject to
5 subsection (f) of this Code section, in the absence of an express, contrary indication by the
6 donor, a person other than the donor is barred from making, amending, or revoking an
7 anatomical gift of a donor's body or part if the donor made an anatomical gift of the
8 donor's body or part under Code Section 44-5-143 or an amendment to an anatomical gift
9 of the donor's body or part under Code Section 44-5-144.

10 (b) A donor's revocation of an anatomical gift of the donor's body or part under Code
11 Section 44-5-144 is not a refusal and does not bar another person specified in Code
12 Sections 44-5-142 and 44-5-147 from making an anatomical gift of the donor's body or
13 part under Code Section 44-5-143 or 44-5-148.

14 (c) If a person other than the donor makes an unrevoked anatomical gift of the donor's
15 body or part under Code Section 44-5-143 or an amendment to an anatomical gift of the
16 donor's body or part under Code Section 44-5-144, another person may not make, amend,
17 or revoke the gift of the donor's body or part under Code Section 44-5-148.

18 (d) A revocation of an anatomical gift of a donor's body or part under Code Section
19 44-5-144 by a person other than the donor does not bar another person from making an
20 anatomical gift of the body or part under Code Section 44-5-143 or 44-5-148.

21 (e) In the absence of an express, contrary indication by the donor or other person
22 authorized to make an anatomical gift under Code Section 44-5-142, an anatomical gift of
23 a part is neither a refusal to give another part nor a limitation on the making of an
24 anatomical gift of another part at a later time by the donor or another person.

25 (f) In the absence of an express, contrary indication by the donor or other person
26 authorized to make an anatomical gift under Code Section 44-5-142, an anatomical gift of
27 a part for one or more of the purposes set forth in Code Section 44-5-142 is not a limitation
28 on the making of an anatomical gift of the part for any of the other purposes by the donor
29 or any other person under Code Section 44-5-143 or 44-5-148.

30 (g) If a donor who is an unemancipated minor dies, a parent of the donor who is
31 reasonably available may revoke or amend an anatomical gift of the donor's body or part.

32 (h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is
33 reasonably available may revoke the minor's refusal.

1 44-5-147.

2 (a) Subject to subsections (b) and (c) of this Code section and unless barred by Code
3 Section 44-5-145 or 44-5-146, an anatomical gift of a decedent's body or part for the
4 purpose of transplantation, therapy, research, or education may be made by any member
5 of the following classes of persons who is reasonably available, in the order of priority
6 listed:

7 (1) An agent of the decedent at the time of death who could have made an anatomical
8 gift under paragraph (2) of Code Section 44-5-142 immediately before the decedent's
9 death;

10 (2) The spouse of the decedent;

11 (3) Adult children of the decedent;

12 (4) Parents of the decedent;

13 (5) Adult siblings of the decedent;

14 (6) Adult grandchildren of the decedent;

15 (7) Grandparents of the decedent;

16 (8) The persons who were acting as the guardians of the person of the decedent at the
17 time of death;

18 (9) Any other person having the authority to dispose of the decedent's body; and

19 (10) A representative ad litem who shall be appointed by a court of competent
20 jurisdiction forthwith upon a petition heard ex parte filed by any person, which
21 representative ad litem shall ascertain that no person of higher priority exists and is
22 reasonably available who objects to the gift of all or any part of the decedent's body and
23 that no evidence exists of the decedent's having made a communication expressing a
24 desire that his or her body or body parts not be donated upon death.

25 (b) If there is more than one member of a class listed in paragraph (1), (3), (4), (5), (6), (7),
26 or (8) of subsection (a) of this Code section entitled to make an anatomical gift, an
27 anatomical gift may be made by a member of the class only if the person to which the gift
28 may pass under Code Section 44-5-149 in good faith obtains a representation from the
29 member that the member does not know of an objection by another member of the class.
30 If an objection is known, the gift may be made only by a majority of the members of the
31 class who are reasonably available.

32 (c) A person may not make an anatomical gift if, at the time of the decedent's death, a
33 person in a prior class under subsection (a) of this Code section is reasonably available to
34 make or to object to the making of an anatomical gift.

1 44-5-148.

2 (a) A person authorized to make an anatomical gift under Code Section 44-5-147 may
3 make an anatomical gift by a document of gift signed by the person making the gift or by
4 that person's oral communication that is electronically recorded or is contemporaneously
5 reduced to a record and signed by the individual receiving the oral communication.

6 (b) Subject to subsection (c) of this Code section, an anatomical gift by a person
7 authorized under Code Section 44-5-147 may be amended or revoked orally or in a record
8 by any member of a prior class who is reasonably available. If more than one member of
9 the prior class is reasonably available, the gift made by a person authorized under Code
10 Section 44-5-147 may be:

11 (1) Amended only if a majority of the reasonably available members agree to the
12 amending of the gift; or

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

15 (c) A revocation under subsection (b) of this Code section is effective only if, before an
16 incision has been made to remove a part from the donor's body or before invasive
17 procedures have begun to prepare the recipient, the procurement organization, transplant
18 hospital, or physician or technician knows of the revocation.

19 44-5-149.

20 (a) An anatomical gift may be made to the following persons named in the document of
21 gift:

22 (1) A hospital; accredited medical school, dental school, college, or university; organ
23 procurement organization; or other appropriate person, for research or education;

24 (2) Subject to subsection (b) of this Code section, an individual designated by the person
25 making the anatomical gift if the individual is the recipient of the part; or

26 (3) An eye bank or tissue bank.

27 (b) If an anatomical gift to an individual under paragraph (2) of subsection (a) of this Code
28 section cannot be transplanted into the individual, the part passes in accordance with
29 subsection (g) of this Code section in the absence of an express, contrary indication by the
30 person making the anatomical gift.

31 (c) If an anatomical gift of one or more specific parts or of all parts is made in a document
32 of gift that does not name a person described in subsection (a) of this Code section but
33 identifies the purpose for which an anatomical gift may be used, the following rules apply:

34 (1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the
35 gift passes to the appropriate eye bank;

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

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

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

8 (d) For the purpose of subsection (c) of this Code section, if there is more than one purpose
9 of an anatomical gift set forth in the document of gift but the purposes are not set forth in
10 any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift
11 cannot be used for transplantation or therapy, the gift may be used for research or
12 education.

13 (e) If an anatomical gift of one or more specific parts is made in a document of gift that
14 does not name a person described in subsection (a) of this Code section and does not
15 identify the purpose of the gift, the gift may be used only for transplantation or therapy, and
16 the gift passes in accordance with subsection (g) of this Code section.

17 (f) If a document of gift specifies only a general intent to make an anatomical gift by
18 words such as 'donor,' 'organ donor,' or 'body donor,' or by a symbol or statement of similar
19 import, the gift may be used only for transplantation or therapy, and the gift passes in
20 accordance with subsection (g) of this Code section.

21 (g) For purposes of subsections (b), (e), and (f) of this Code section, the following rules
22 apply:

23 (1) If the part is an eye, the gift passes to the appropriate eye bank;

24 (2) If the part is tissue, the gift passes to the appropriate tissue bank; and

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

27 (h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical
28 gift under paragraph (2) of subsection (a) of this Code section, passes to the organ
29 procurement organization as custodian of the organ.

30 (i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this Code
31 section or the decedent's body or part is not used for transplantation, therapy, research, or
32 education, custody of the body or part passes to the person under obligation to dispose of
33 the body or part.

34 (j) A person may not accept an anatomical gift if the person knows that the gift was not
35 effectively made under Code Sections 44-5-143 and 44-5-148 or if the person knows that
36 the decedent made a refusal under Code Section 44-5-145 that was not revoked. For
37 purposes of this subsection, if a person knows that an anatomical gift was made on a

1 document of gift, the person is deemed to know of any amendment or revocation of the gift
2 or any refusal to make an anatomical gift on the same document of gift.

3 (k) Except as otherwise provided in paragraph (2) of subsection (a) of this Code section,
4 nothing in this article affects the allocation of organs for transplantation or therapy.

5 44-5-150.

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

9 (1) A law enforcement officer, firefighter, paramedic, emergency medical technician, or
10 other first responder finding the individual, in accordance with subsection (b.1) of Code
11 Section 17-6-11; and

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

14 (b) If a document of gift or a refusal to make an anatomical gift is located by the search
15 required by subsection (a) of this Code section and the individual or deceased individual
16 to whom it relates is taken to a hospital, the person responsible for conducting the search
17 shall send the document of gift or refusal to the hospital.

18 (c) A person is not subject to criminal or civil liability for failing to discharge the duties
19 imposed by this Code section but may be subject to administrative sanctions.

20 44-5-151.

21 (a) A document of gift need not be delivered during the donor's lifetime to be effective.

22 (b) Upon or after an individual's death, a person in possession of a document of gift or a
23 refusal to make an anatomical gift with respect to the individual shall allow examination
24 and copying of the document of gift or refusal by a person authorized to make or object to
25 the making of an anatomical gift with respect to the individual or by a person to which the
26 gift could pass under Code Section 44-5-149.

27 44-5-152.

28 (a) When a hospital refers an individual at or near death to a procurement organization, the
29 organization shall make a reasonable search of the records of any donor registry that it
30 knows exists for the geographical area in which the individual resides to ascertain whether
31 the individual has made an anatomical gift.

32 (b) The Department of Driver Services shall make donor information reasonably available
33 to a procurement organization.

1 (c) When a hospital refers an individual at or near death to a procurement organization, the
2 organization may conduct any reasonable examination necessary to ensure the medical
3 suitability of a part that is or could be the subject of an anatomical gift for transplantation,
4 therapy, research, or education from a donor or a prospective donor. During the
5 examination period, measures necessary to ensure the medical suitability of the part may
6 not be withdrawn unless the hospital or procurement organization knows that the individual
7 expressed a contrary intent.

8 (d) Unless prohibited by law other than this article, at any time after a donor's death, the
9 person to which a part passes under Code Section 44-5-149 may conduct any reasonable
10 examination necessary to ensure the medical suitability of the body or part for its intended
11 purpose.

12 (e) Unless prohibited by law other than this article, an examination under subsection (c)
13 or (d) of this Code section may include an examination of all medical and dental records
14 of the donor or prospective donor.

15 (f) Unless a procurement organization knows the minor is emancipated, the procurement
16 organization shall conduct a reasonable search for the parents of the minor and provide the
17 parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal,
18 if any.

19 (g) Upon referral by a hospital under subsection (a) of this Code section, a procurement
20 organization shall make a reasonable search for any person listed in Code Section 44-5-147
21 having priority to make an anatomical gift on behalf of a prospective donor. If a
22 procurement organization receives information that an anatomical gift to any other person
23 was made, amended, or revoked, it shall promptly advise the other person of all relevant
24 information.

25 (h) Subject to subsection (i) of Code Section 44-5-149 and Code Section 44-5-151, the
26 rights of the person to which a part passes under Code Section 44-5-149 are superior to the
27 rights of all others with respect to the part. The person may accept or reject an anatomical
28 gift in whole or in part. Subject to the terms of the document of gift and this article, a
29 person that accepts an anatomical gift of an entire body may allow embalming, burial, or
30 cremation and use of remains in a funeral service. If the gift is of a part, the person to
31 which the part passes under Code Section 44-5-149, upon the death of the donor and before
32 embalming, burial, or cremation, shall cause the part to be removed without unnecessary
33 mutilation.

34 (i) Neither the physician who attends the decedent at death nor the physician who
35 determines the time of the decedent's death may participate in the procedures for removing
36 or transplanting a part from the decedent.

1 (j) A physician or technician may remove a donated part from the body of a donor that the
2 physician or technician is qualified to remove.

3 44-5-153.

4 Each hospital in this state shall enter into agreements or affiliations with procurement
5 organizations for coordination of procurement and use of anatomical gifts.

6 44-5-154.

7 (a) Except as otherwise provided in subsection (b) of this Code section, a person that for
8 valuable consideration knowingly purchases or sells a part for transplantation or therapy
9 if removal of a part from an individual is intended to occur after the individual's death
10 commits a felony and upon conviction is subject to a fine not exceeding \$50,000.00 or
11 imprisonment not exceeding five years, or both.

12 (b) A person may charge a reasonable amount for the removal, processing, preservation,
13 quality control, storage, transportation, implantation, or disposal of a part.

14 44-5-155.

15 A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals,
16 defaces, or obliterates a document of gift, an amendment or revocation of a document of
17 gift, or a refusal commits a felony and upon conviction is subject to a fine not exceeding
18 \$50,000.00 or imprisonment not exceeding five years, or both.

19 44-5-156.

20 (a) A person that acts in accordance with this article or with the applicable anatomical gift
21 law of another state, or attempts in good faith to do so, is not liable for the act in a civil
22 action, criminal prosecution, or administrative proceeding.

23 (b) Neither the person making an anatomical gift nor the donor's estate is liable for any
24 injury or damage that results from the making or use of the gift.

25 (c) In determining whether an anatomical gift has been made, amended, or revoked under
26 this article, a person may rely upon representations of an individual listed in paragraph (2),
27 (3), (4), (5), (6), or (7) of subsection (a) of Code Section 44-5-147 relating to the
28 individual's relationship to the donor or prospective donor unless the person knows that the
29 representation is untrue.

30 44-5-157.

31 (a) A document of gift is valid if executed in accordance with:

32 (1) This article;

1 (2) The laws of the state or country where it was executed; or

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

5 (b) If a document of gift is valid under this Code section, the law of this state governs the
6 interpretation of the document of gift.

7 (c) A person may presume that a document of gift or amendment of an anatomical gift is
8 valid unless that person knows that it was not validly executed or was revoked.

9 44-5-158.

10 (a) The Department of Driver Services shall make available to procurement organizations
11 or secure data centers maintained and managed at the direction of a procurement
12 organization the name, license number, date of birth, gender, and most recent address of
13 any person who obtains an organ donor's license; provided, however, that the gender
14 information shall only be made available to a procurement organization or secure data
15 center if such organization or center has sufficient funds to cover the associated costs with
16 providing such information. Information so obtained by such organizations shall be used
17 for the purpose of establishing a state-wide organ donor registry accessible to organ tissue
18 and eye banks authorized to function as such in this state and shall not be further
19 disseminated.

20 (b) A donor registry shall:

21 (1) Allow a donor or other person authorized under Code Section 44-5-142 to include
22 on the donor registry a statement or symbol that the donor has made, amended, or
23 revoked an anatomical gift;

24 (2) Be accessible to a procurement organization to allow it to obtain relevant information
25 on the donor registry to determine, at or near death of the donor or a prospective donor,
26 whether the donor or prospective donor has made, amended, or revoked an anatomical
27 gift; and

28 (3) Be accessible for purposes of paragraphs (1) and (2) of this subsection seven days a
29 week on a 24 hour basis.

30 (c) Personally identifiable information on a donor registry about a donor or prospective
31 donor may not be used or disclosed without the express consent of the donor, prospective
32 donor, or person that made the anatomical gift for any purpose other than to determine, at
33 or near death of the donor or prospective donor, whether the donor or prospective donor
34 has made, amended, or revoked an anatomical gift; provided, however, this shall not
35 preclude the use of aggregated demographic information for the purposes of annual
36 reporting, research, or education.

1 (d) This Code section does not prohibit any person from creating or maintaining a donor
2 registry that is not established by or under contract with this state. Any such registry shall
3 comply with subsections (b) and (c) of this Code section.

4 44-5-159.

5 If a prospective donor has an advance directive for health care in accordance with Chapter
6 32 of Title 31 or a declaration signed by a prospective donor, unless it expressly provides
7 to the contrary, measures necessary to ensure the medical suitability of an organ for
8 transplantation or therapy may not be withheld or withdrawn from the prospective donor.

9 44-5-159.1.

10 (a) A medical examiner and procurement organizations shall cooperate with each other to
11 maximize the opportunity to recover anatomical gifts for the purpose of transplantation,
12 therapy, research, or education.

13 (b) If a medical examiner receives notice from a procurement organization that an
14 anatomical gift might be available or was made with respect to a decedent whose body is
15 under the jurisdiction of the medical examiner and a postmortem examination is going to
16 be performed, unless the medical examiner denies recovery in accordance with Code
17 Section 44-5-159.2, the medical examiner or designee shall conduct, when practicable, a
18 postmortem examination of the body or the part in a manner and within a period
19 compatible with its preservation for the purposes of the gift. The date and location of such
20 examinations shall occur as specified in the agreement as provided for in subsection (e) of
21 Code Section 44-5-159.2.

22 (c) A part may not be removed from the body of a decedent under the jurisdiction of a
23 medical examiner for transplantation, therapy, research, or education unless the part is the
24 subject of an anatomical gift. The body of a decedent under the jurisdiction of the medical
25 examiner may not be delivered to a person for research or education unless the body is the
26 subject of an anatomical gift. This subsection shall not preclude a medical examiner from
27 performing the medicolegal autopsy upon the body or parts of a decedent under the
28 jurisdiction of the medical examiner or from using the body or parts of a decedent under
29 the jurisdiction of the medical examiner for the purposes of education, training, and
30 research required by the medical examiner.

31 44-5-159.2.

32 (a) Upon specific request of a procurement organization, and in accordance with the
33 procedures set forth under the agreement established pursuant to subsection (e) of this Code
34 section, a medical examiner shall release to the procurement organization the name, contact

1 information, and available medical and social history of a decedent whose body is under
2 the jurisdiction of the medical examiner. If the decedent's body or part is medically
3 suitable for transplantation, therapy, research, or education, and the gift or procurement
4 does occur, the medical examiner shall release postmortem examination results to the
5 procurement organization. The procurement organization may make a subsequent
6 disclosure of the postmortem examination results or other information received from the
7 medical examiner only if relevant to transplantation, therapy, research, or education.

8 (b) The medical examiner may conduct a medicolegal investigation by reviewing all
9 medical records, laboratory test results, x-rays, other diagnostic results, and other
10 information that any person possesses about a donor or prospective donor whose body is
11 under the jurisdiction of the medical examiner that the medical examiner determines may
12 be relevant to the investigation.

13 (c) A person that has any information requested by a medical examiner pursuant to
14 subsection (b) of this Code section shall provide that information as expeditiously as
15 possible to allow the medical examiner to conduct the medicolegal investigation within a
16 period compatible with the preservation of parts for the purpose of transplantation, therapy,
17 research, or education.

18 (d) If an anatomical gift has been or might be made of a part of a decedent whose body is
19 under the jurisdiction of the medical examiner and a postmortem examination is not
20 required, or the medical examiner determines that a postmortem examination is required
21 but that the recovery of the part that is the subject of an anatomical gift will not interfere
22 with the examination, the medical examiner and procurement organization shall cooperate
23 in the timely removal of the part from the decedent for the purpose of transplantation,
24 therapy, research, or education.

25 (e) The medical examiner and procurement organizations shall enter into an agreement
26 signed by both parties setting forth protocols and procedures to govern relations between
27 the parties when an anatomical gift of a part from a decedent under the jurisdiction of the
28 medical examiner has been or might be made, but the medical examiner believes that the
29 recovery of the part could interfere with the postmortem investigation into the decedent's
30 cause or manner of death. Decisions regarding the recovery of organs, tissue, and eyes
31 from such a decedent, and decisions about approaches to tissue donation cases compared
32 with organ donation cases, shall be made in accordance with the agreement. In the event
33 that a medical examiner denies recovery of an anatomical gift, the procurement
34 organization may request the regional medical examiner serving the county having
35 jurisdiction over the death to reconsider the denial and to permit the recovery to proceed;
36 provided, however, that if a county having jurisdiction over the death does not have a
37 county medical examiner as defined in paragraph (2) of Code Section 45-16-21, and a

1 recovery is denied as provided herein, the procurement organization may request the chief
2 medical examiner appointed pursuant to Code Section 35-3-153 to reconsider the denial
3 and to permit the recovery to proceed. The parties shall evaluate the effectiveness of the
4 protocols and procedures at regular intervals but no less frequently than every two years.
5 A medical examiner may limit its involvement and agreements with procurement
6 organizations to one procurement organization, but may work with more than one
7 procurement organization in the discretion of the medical examiner.

8 (f) If the medical examiner or designee allows recovery of a part under subsection (d) or
9 (e) of this Code section, the procurement organization, upon request, shall cause the
10 physician or technician who removes the part to provide the medical examiner with a
11 record describing the condition of the part, a biopsy, a photograph, and any other
12 information and observations that would assist in the postmortem examination.

13 (g) If a medical examiner or designee is required to be present at a removal procedure
14 pursuant to an agreement entered into under subsection (e) of this Code section, upon
15 request the procurement organization requesting the recovery of the part shall reimburse
16 the medical examiner or designee for the additional costs incurred in complying with
17 subsection (e) of this Code section.

18 44-5-159.3.

19 This article applies to an anatomical gift or amendment to, revocation of, or refusal to make
20 an anatomical gift, whenever made.

21 44-5-159.4.

22 This article modifies, limits, and supersedes the Electronic Signatures in Global and
23 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or
24 supersede Section 101(a) of that act, 15 U.S.C. Section 7001, or authorize electronic
25 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section
26 7003(b).

27 **SECTION 2.**

28 Article 6 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
29 crimes and offenses relative to human body trafficking, is amended by revising Code Section
30 16-12-160, relating to buying or selling or offering to buy or sell the human body or parts,
31 as follows:

32 "16-12-160.

33 (a) It shall be unlawful, except as provided in subsection (b) of this Code section, for any
34 person, firm, or corporation to buy or sell, to offer to buy or sell, or to assist another in

1 buying or selling or offering to buy or sell a human body or any part of a human body or
2 buy or sell a human fetus or any part thereof.

3 (b) The prohibition contained in subsection (a) of this Code section shall not apply to:

4 (1) The purchase or sale of whole blood, blood plasma, blood products, blood
5 derivatives, other self-replicating body fluids, or hair;

6 (2) A gift or donation of a human body or any part of a human body or any procedure
7 connected therewith as provided in Article 6 of Chapter 5 of Title 44 or to the payment
8 of a ~~processing~~ fee in connection with such gift or donation pursuant to subsection (b) of
9 Code Section 44-5-154 if such fee is paid to a ~~bank or storage facility~~ procurement
10 organization, as ~~those terms are defined~~ that term is defined in Code Section 44-5-142
11 44-5-141;

12 (3) The reimbursement of actual expenses, including medical costs, lost income, and
13 travel expenses, incurred by a living person in giving or donating a part of the person's
14 body;

15 (4) The payment of financial assistance under a plan of insurance or other health care
16 coverage;

17 (5) The purchase or sale of human tissue, organs, or other parts of the human body for
18 health sciences education; or

19 (6) The payment of reasonable costs associated with the removal, storage, or
20 transportation of a human body or any part of a human body given or donated for medical
21 or scientific purposes.

22 (c) Any person, firm, or corporation convicted of violating subsection (a) of this Code
23 section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine
24 not exceeding \$5,000.00 or by imprisonment for not less than one year nor more than five
25 years, or both."

26 SECTION 3.

27 Chapter 23 of Title 31 of the Official Code of Georgia Annotated, relating to eye banks, is
28 amended by repealing and reserving Code Section 31-23-6, relating to removal of eye or
29 corneal tissue by a coroner, medical examiner, or other individual.

30 SECTION 4.

31 The following Code sections of the Official Code of Georgia Annotated are amended by
32 striking "Georgia Anatomical Gift Act" wherever that term occurs and inserting in its place
33 "Georgia Revised Uniform Anatomical Gift Act":

34 (1) Code Section 31-23-2, relating to the effect on eye donations of the "Georgia
35 Anatomical Gift Act";

- 1 (2) Code Section 31-32-4, relating to the advance directive for health care statutory form;
2 (3) Code Section 31-32-7, relating to duties and responsibilities of health care agents
3 designated in advance directives for health care;
4 (4) Code Section 31-32-8, relating to duties and responsibilities of health care providers
5 relating to advance directives for health care; and
6 (5) Code Section 40-5-6, relating to forms for making of anatomical gifts upon issuance
7 or renewal of drivers' licenses.

8 **SECTION 5.**

9 All laws and parts of laws in conflict with this Act are repealed.