

CHAPTER 127

HOUSE BILL No. 2010
(Amended by Chapter 195)

AN ACT enacting the revised uniform anatomical gift act; amending K.S.A. 8-1328, 58-654, 59-3075 and 65-3219 and K.S.A. 2006 Supp. 8-243, 8-247, 8-1325 and 65-1728 and repealing the existing sections; also repealing K.S.A. 65-3209, 65-3210, 65-3211, 65-3212, 65-3213, 65-3214, 65-3215, 65-3216, 65-3217 and 65-3218.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. This act may be cited as the revised uniform anatomical gift act.

New Sec. 2. In this act:

- (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 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.
- (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, subject to restrictions imposed by law other than this act, 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, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 11, and amendments thereto.
- (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 database 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 division of motor vehicles of the department of revenue 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.
- (12) "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. The term includes an ambulatory surgical center and recuperation center.
- (13) "Identification card" means an identification card issued by the division of motor vehicles of the department of revenue.
- (14) "Know" means to have actual knowledge.
- (15) "Minor" means an individual who is under 18 years of age.
- (16) "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.
- (17) "Parent" means a parent whose parental rights have not been terminated.
- (18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.
- (19) "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.
- (20) "Physician" means an individual authorized to practice medicine

or osteopathy under the law of any state.

(21) “Procurement organization” means an eye bank, organ procurement organization, or tissue bank.

(22) “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.

(23) “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.

(24) “Recipient” means an individual into whose body a decedent’s part has been or is intended to be transplanted.

(25) “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.

(26) “Refusal” means a record created under section 7, and amendments thereto, that expressly states an intent to bar other persons from making an anatomical gift of an individual’s body or part.

(27) “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.

(28) “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.

(29) “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.

(30) “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 donated for the purpose of research or education.

(31) “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.

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

New Sec. 3. This act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

New Sec. 4. Subject to section 8, and amendments thereto, 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 section 5, and amendments thereto, by:

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

(A) Emancipated; or

(B) authorized under state law to apply for a driver’s license or non-driver identification card because the donor is at least 16 years of age;

(2) an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is an unemancipated minor;

or

(4) the donor’s guardian.

New Sec. 5. (a) A donor may make an anatomical gift:

(1) 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;

(2) in a will;

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

(4) as provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under section 4, and amendments thereto, 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 must:

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

(2) state that it has been signed and witnessed as provided in paragraph (1).

(c) 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.

(d) 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.

New Sec. 6. (a) Subject to section 8, and amendments thereto, a donor or other person authorized to make an anatomical gift under section 4, and amendments thereto, may amend or revoke an anatomical gift by:

(1) A record signed by:

(A) The donor;

(B) the other person; or

(C) subject to subsection (b), 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

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

(b) A record signed pursuant to subsection (a)(1)(C) must:

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

(2) state that it has been signed and witnessed as provided in paragraph (1).

(c) Subject to section 8, and amendments thereto, a donor or other person authorized to make an anatomical gift under section 4, and amendments thereto, 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.

(d) 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 two adults, at least one of whom is a disinterested witness.

(e) 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 subsection (a).

New Sec. 7. (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) A record signed by:

(A) The individual; or

(B) subject to subsection (b), another acting at the direction of the individual if the individual is physically unable to sign;

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

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

(b) A record signed pursuant to subsection (a)(1)(B) must:

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

(2) state that it has been signed and witnessed as provided in paragraph (1).

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

(1) In the manner provided in subsection (a) for making a refusal;

(2) by subsequently making an anatomical gift pursuant to section 5, and amendments thereto, that is inconsistent with the refusal; or

(3) 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.

(d) Except as otherwise provided in section 8 (h), and amendments thereto, 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.

New Sec. 8. (a) Except as otherwise provided in subsection (g) and subject to subsection (f), 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 section 5, and amendments thereto, or an amendment to an anatomical gift of the donor's body or part under section 6, and amendments thereto.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 6, and amendments thereto, is not a refusal and does not bar another person specified in section 4 or 9, and amendments thereto, from making an anatomical gift of the donor's body or part under section 5 or 10, and amendments thereto.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section 5, and amendments thereto, or an amendment to an anatomical gift of the donor's body or part under section 6, and amendments thereto, another person may not make, amend, or revoke the gift of the donor's body or part under section 10, and amendments thereto.

(d) A revocation of an anatomical gift of a donor's body or part under section 6, and amendments thereto, by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 5 or 10, and amendments thereto.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 4, and amendments thereto, 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.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 4, and amendments thereto, an anatomical gift of a part for one or more of the purposes set forth in section 4, and amendments thereto, 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 section 5 or 10, and amendments thereto.

(g) 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.

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

New Sec. 9. (a) Subject to subsections (b) and (c) and unless barred by section 7 or 8, and amendments thereto, 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:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under section 4 (2), and amendments thereto, immediately before the decedent's death;

(2) the spouse of the decedent;

(3) adult children of the decedent;

(4) parents of the decedent;

(5) adult siblings of the decedent;

(6) adult grandchildren of the decedent;

(7) grandparents of the decedent;

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

(9) an adult who exhibited special care and concern for the decedent and who was familiar with the decedent's personal values; and

(10) any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) 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 section 11, and amendments thereto, 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.

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

New Sec. 10. (a) A person authorized to make an anatomical gift under section 9, and amendments thereto, 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.

(b) Subject to subsection (c), an anatomical gift by a person authorized under section 9, and amendments thereto, 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 section 9, and amendments thereto, may be:

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

(2) 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.

(c) A revocation under subsection (b) 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.

New Sec. 11. (a) An anatomical gift may be made to the following persons named in the document of gift:

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

(2) subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(3) an eye bank or tissue bank.

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

(c) 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 subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) 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.

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

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

(4) 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.

(d) For the purpose of subsection (c), 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. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) 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 (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(f) 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 may be used

only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(g) For purposes of subsections (b), (e) and (f) the following rules apply:

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

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

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

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

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) 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.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 5 or 10, and amendments thereto, or if the person knows that the decedent made a refusal under section 7, and amendments thereto, that was not revoked. For purposes of the subsection, 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.

(k) Except as otherwise provided in subsection (a)(2), nothing in this act affects the allocation of organs for transplantation or therapy.

New Sec. 12. (a) 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:

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

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

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a)(1) 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.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section.

New Sec. 13. (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) 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 section 11, and amendments thereto.

New Sec. 14. (a) 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 division of motor vehicles of the department of revenue and any 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.

(b) A procurement organization must be allowed reasonable access to information in the records of the division of motor vehicles of the department of revenue to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure 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 ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this act, at any time after a donor's death, the person to which a part passes under section 11, and amendments thereto, may conduct any reasonable examination necessary

to ensure the medical suitability of the body or part for its intended purpose.

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

(f) 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.

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in section 9, and amendments thereto, 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.

(h) Subject to sections 11 (i) and 22, and amendments thereto, the rights of the person to which a part passes under section 11, and amendments thereto, 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 section 11, and amendments thereto, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) 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.

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

New Sec. 15. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

New Sec. 16. (a) Except as otherwise provided in subsection (b), 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 severity level 5, nonperson felony.

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

New Sec. 17. 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 severity level 10, nonperson felony.

New Sec. 18. (a) A person that acts in accordance with this act or with the applicable anatomical gift law of another state, or in good faith attempts to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

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

(c) In determining whether an anatomical gift has been made, amended, or revoked under this act, a person may rely upon representations of an individual listed in section 9(a)(2), (3), (4), (5), (6), (7), or (8), and amendments thereto, relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

New Sec. 19. (a) A document of gift is valid if executed in accordance with:

- (1) This act;
- (2) the laws of the state or country where it was executed; or
- (3) 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.

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

(c) 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.

New Sec. 20. (a) In this section:

(1) “Advance health-care directive” means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor’s direction concerning a health-care decision for the prospective donor.

(2) “Declaration” means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) “Health-care decision” means any decision made regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health-care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor, unless the declaration expressly provides to the contrary.

New Sec. 21. (a) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(b) If a coroner 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 coroner and a post-mortem examination is going to be performed, unless the coroner denies recovery in accordance with section 22, and amendments thereto, the coroner 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.

(c) A part may not be removed from the body of a decedent under the jurisdiction of a coroner 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 coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

New Sec. 22. (a) Upon request of a procurement organization, a coroner 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 coroner. If the decedent’s body or part is medically suitable for transplantation, therapy, research, or education, the coroner 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 coroner only if relevant to transplantation or therapy.

(b) The coroner 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 coroner which the coroner determines may be relevant to the investigation.

(c) A person that has any information requested by a coroner pursuant to subsection (b) shall provide that information as expeditiously as possible to allow the coroner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(d) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner and a post-mortem examination is not required, or the coroner 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 coroner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(e) If an anatomical gift of a part from the decedent under the juris-

diction of the coroner has been or might be made, but the coroner 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 coroner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner may allow the recovery.

(f) Following the consultation under subsection (e), in the absence of mutually agreed-upon protocols to resolve conflict between the coroner and the procurement organization, if the coroner intends to deny recovery, the coroner 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 coroner or designee may allow recovery by the procurement organization to proceed, or, if the coroner 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.

(g) If the coroner or designee denies recovery under subsection (f), the coroner or designee shall:

(1) Explain in a record the specific reasons for not allowing recovery of the part;

(2) include the specific reasons in the records of the coroner; and

(3) provide a record with the specific reasons to the procurement organization.

(h) If the coroner or designee allows recovery of a part under subsection (d), (e), or (f), the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner 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.

(i) If a coroner or designee is required to be present at a removal procedure under subsection (f), upon request the procurement organization requesting the recovery of the part shall reimburse the coroner or designee for the additional costs incurred in complying with subsection (f).

New Sec. 23. 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.

New Sec. 24. 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).

Sec. 25. K.S.A. 2006 Supp. 8-243 is hereby amended to read as follows: 8-243. (a) Upon payment of the required fee, the division shall issue to every applicant qualifying under the provisions of this act the driver's license as applied for by the applicant. Such license shall bear the class or classes of motor vehicles which the licensee is entitled to drive, a distinguishing number assigned to the licensee, the name, date of birth, residence address, and a brief description of the licensee, a colored photograph of the licensee, a facsimile of the signature of the licensee or a space upon which the licensee shall write such licensee's usual signature with pen and ink immediately upon receipt of the license and the statement provided for in subsection (b). No driver's license shall be valid until it has been signed by the licensee. All drivers' licenses issued to persons under the age of 21 years shall be readily distinguishable from licenses issued to persons age 21 years or older. In addition, all drivers' licenses issued to persons under the age of 18 years shall also be readily distinguishable from licenses issued to persons age 18 years or older. On and after July 1, 2004, the secretary of revenue shall implement a vertical format to make drivers' licenses issued to persons under the age of 21 more readily distinguishable. Except as otherwise provided, on or after July 1, 2004, no driver's license issued by the division shall be valid until a colored photograph of such licensee has been taken and verified before being placed on the driver's license. The secretary of revenue shall prescribe a fee of not more than \$4 and upon payment of such fee the division shall cause a colored photograph of such applicant to be placed on the driver's license. Upon payment of such fee prescribed by the secretary of revenue, plus payment of the fee required by K.S.A. 8-246, and amend-

ments thereto, for issuance of a new license, the division shall issue to such licensee a new license containing a colored photograph of such licensee. A driver's license which does not contain a colored photograph of the licensee as required may be issued to persons exempted from such requirement. Any such license shall be valid for the purposes of the motor vehicle drivers' license act and the division shall set forth upon such driver's license the words "valid without photo." Any person who is outside the state and for whom the division provides for renewal of the driver's license by mail is exempt from the requirement to have a colored photograph of such person placed on such person's driver's license. Any person belonging to a religious organization which has a basic objection to having their picture taken may sign a statement to that effect and such person shall then be exempt from the picture requirements of this section.

(b) All Kansas drivers' licenses issued to any person 16 years of age or older shall contain a form which provides a statement for making a gift of all or any part of the body of the licensee in accordance with the *revised* uniform anatomical gift act, *sections 1 through 24 and K.S.A. 65-3219, and amendments thereto*, except as otherwise provided by this subsection. The statement to be effective shall be signed by the licensee in the presence of two witnesses who shall sign the statement in the presence of the donor. The gift becomes effective upon the death of the donor. Delivery of the license during the donor's lifetime is not necessary to make a valid gift. Any valid gift statement executed prior to July 1, 1994, shall remain effective until invalidated. The word "Donor" shall be placed on the front of a licensee's driver's license, indicating that the statement for making an anatomical gift under this subsection has been executed by such licensee.

(c) Any person who is deaf or hard of hearing may request that the division issue to such person a driver's license which is readily distinguishable from drivers' licenses issued to other drivers and upon such request the division shall issue such license. Drivers' licenses issued to persons who are deaf or hard of hearing and under the age of 21 years shall be readily distinguishable from drivers' licenses issued to persons who are deaf or hard of hearing and 21 years of age or older.

(d) A driver's license issued to a person required to be registered under K.S.A. 22-4901 et seq., and amendments thereto, shall be assigned a distinguishing number by the division which will readily indicate to law enforcement officers that such person is a registered offender. The division shall develop a numbering system to implement the provisions of this subsection.

Sec. 26. K.S.A. 2006 Supp. 8-247 is hereby amended to read as follows: 8-247. (a) (1) All original licenses shall expire as follows:

(A) Licenses issued to persons who are at least 21 years of age, but less than 65 years of age shall expire on the sixth anniversary of the date of birth of the licensee which is nearest the date of application;

(B) licenses issued to persons who are 65 years of age or older shall expire on the fourth anniversary of the date of birth of the licensee which is nearest the date of application;

(C) any commercial drivers license shall expire on the fourth anniversary of the date of birth of the licensee which is nearest the date of application;

(D) licenses issued to an offender, as defined in K.S.A. 22-4902, and amendments thereto, who is required to register pursuant to the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, shall expire every year on the date of birth of the licensee; or

(E) licenses issued to persons who are less than 21 years of age shall expire on the licensee's twenty-first birthday.

(2) All renewals under: (A) Paragraph (1) (A) shall expire on every sixth anniversary of the date of birth of the licensee; (B) paragraph (1) (B) and (C) shall expire on every fourth anniversary of the date of birth of the licensee; (C) paragraph (1)(D) shall expire every year on the date of birth of the licensee; and (D) paragraph (1) (E), if a renewal license is issued, shall expire on the licensee's twenty-first birthday. No driver's license shall expire in the same calendar year in which the original license or renewal license is issued, except that if the foregoing provisions of this section shall require the issuance of a renewal license or an original license for a period of less than six calendar months, the license issued to the applicant shall expire in accordance with the provisions of this subsection.

(b) If the driver's license of any person expires while such person is

outside of the state of Kansas and on active duty in the armed forces of the United States, the license of such person shall be renewable, without examination, at any time prior to the end of the sixth month following the discharge of such person from the armed forces, or within 90 days after reestablished residence within the state, whichever time is sooner. If the driver's license of any person expires while such person is outside the United States, the division shall provide for renewal by mail.

(c) At least 30 days prior to the expiration of a person's license the division shall mail a notice of expiration or renewal application to such person at the address shown on the license. The division shall include with such notice: (1) A copy of the eyesight examination form; (2) a copy of the written examination prescribed by subsection (e); (3) a copy of the Kansas driver's manual, prepared pursuant to K.S.A. 8-266b, and amendments thereto; and (4) the written information required under subsection (g).

(d) Every driver's license shall be renewable on or before its expiration upon application and payment of the required fee and successful completion of the examinations required by subsection (e). Application for renewal of a valid driver's license shall be made to the division in accordance with rules and regulations adopted by the secretary of revenue. Such application shall contain all the requirements of subsection (b) of K.S.A. 8-240, and amendments thereto. Upon satisfying the foregoing requirements of this subsection, and if the division makes the findings required by K.S.A. 8-235b, and amendments thereto, for the issuance of an original license, the license shall be renewed without examination of the applicant's driving ability. If the division finds that any of the statements relating to revocation, suspension or refusal of licenses required under subsection (b) of K.S.A. 8-240, and amendments thereto, are in the affirmative, or if it finds that the license held by the applicant is not a valid one, or if the applicant has failed to make application for renewal of such person's license on or before the expiration date thereof, the division may require the applicant to take an examination of ability to exercise ordinary and reasonable control in the operation of a motor vehicle as provided in K.S.A. 8-235d, and amendments thereto.

(e) (1) Prior to renewal of a driver's license, the applicant shall pass an examination of eyesight and a written examination of ability to read and understand highway signs regulating, warning and directing traffic and knowledge of the traffic laws of this state. Such examination shall be equivalent to the tests required for an original driver's license under K.S.A. 8-235d, and amendments thereto. A driver's license examiner shall administer the examinations without charge and shall report the results of the examinations on a form provided by the division, which shall be submitted by the applicant to the division at the time such applicant applies for license renewal.

(2) In lieu of the examination of the applicant's eyesight by the examiner, the applicant may submit a report on the examination of eyesight by a physician licensed to practice medicine and surgery or by a licensed optometrist. The report shall be based on an examination of the applicant's eyesight not more than three months prior to the date the report is submitted, and it shall be made on a form furnished the applicant with the notice of the expiration of license under subsection (c).

(3) In lieu of the driver's license examiner administering the written examination, the applicant may complete the examination furnished with the notice of the expiration of license under subsection (c) and submit the completed examination to the division.

(4) The division shall determine whether the results of the written examination and the eyesight reported are sufficient for renewal of the license and, if the results of either or both of the examinations are insufficient, the division shall notify the applicant of such fact and return the license fee. In determining the sufficiency of an applicant's eyesight, the division may request an advisory opinion of the medical advisory board, which is hereby authorized to render such opinions.

(5) An applicant who is denied a license under this subsection (e) may reapply for renewal of such person's driver's license, except that if such application is not made within 90 days of the date the division sent notice to the applicant that the license would not be renewed, the applicant shall proceed as if applying for an original driver's license. If the applicant has been denied renewal of such person's driver's license because such applicant failed to pass the written examination, the applicant

shall pay an examination fee of \$1.50 to take the test again.

(6) When the division has good cause to believe that an applicant for renewal of a driver's license is incompetent or otherwise not qualified to operate a motor vehicle in accord with the public safety and welfare, the division may require such applicant to submit to such additional examinations as are necessary to determine that the applicant is qualified to receive the license applied for. Subject to paragraph (7) of this subsection, in so evaluating such qualifications, the division may request an advisory opinion of the medical advisory board which is hereby authorized to render such opinions in addition to its duties prescribed by subsection (b) of K.S.A. 8-255b, and amendments thereto. Any such applicant who is denied the renewal of such a driver's license because of a mental or physical disability shall be afforded a hearing in the manner prescribed by subsection (c) of K.S.A. 8-255, and amendments thereto.

(7) Seizure disorders which are controlled shall not be considered a disability. In cases where such seizure disorders are not controlled, the director or the medical advisory board may recommend that such person be issued a driver's license to drive class C or M vehicles and restricted to operating such vehicles as the division determines to be appropriate to assure the safe operation of a motor vehicle by the licensee. Restricted licenses issued pursuant to this paragraph shall be subject to suspension or revocation. For the purpose of this paragraph, seizure disorders which are controlled means that the licensee has not sustained a seizure involving a loss of consciousness in the waking state within six months preceding the application or renewal of a driver's license and whenever a person licensed to practice medicine and surgery makes a written report to the division stating that the licensee's seizures are controlled. The report shall be based on an examination of the applicant's medical condition not more than three months prior to the date the report is submitted. Such report shall be made on a form furnished to the applicant by the division. Any physician who makes such report shall not be liable for any damages which may be attributable to the issuance or renewal of a driver's license and subsequent operation of a motor vehicle by the licensee.

(f) If the driver's license of any person expires while such person is outside the state of Kansas, the license of such person shall be extended for a period not to exceed six months and shall be renewable, without a driving examination, at any time prior to the end of the sixth month following the original expiration date of such license or within 10 days after such person returns to the state, whichever time is sooner.

(g) The division shall provide the following information in a person's notice of expiration or renewal under subsection (c):

(1) Written information explaining the person's right to make an anatomical gift in accordance with K.S.A. 8-243, and amendments thereto, and the *revised* uniform anatomical gift act, *sections 1 through 24 and K.S.A. 65-3219, and amendments thereto*;

(2) written information describing the organ donation registry program maintained by the Kansas federally designated organ procurement organization. The written information required under this paragraph shall include, in a type, size and format that is conspicuous in relation to the surrounding material, the address and telephone number of Kansas' federally designated organ procurement organization, along with an advisory to call such designated organ procurement organization with questions about the organ donor registry program;

(3) written information giving the applicant the opportunity to be placed on the organ donation registry described in paragraph (2);

(4) inform the applicant in writing that, if the applicant indicates under this subsection a willingness to have such applicant's name placed on the organ donor registry described in paragraph (2), the division will forward the applicant's name, gender, date of birth and most recent address to the organ donation registry maintained by the Kansas federally designated organ procurement organization, as required by paragraph (6);

(5) the division may fulfill the requirements of paragraph (4) by one or more of the following methods:

(A) Providing printed material enclosed with a mailed notice for driver's license renewal; or

(B) providing printed material to an applicant who personally appears at an examining station;

(6) if an applicant indicates a willingness under this subsection to have such applicant's name placed on the organ donor registry, the division

shall within 10 days forward the applicant's name, gender, date of birth and most recent address to the organ donor registry maintained by the Kansas federally designated organ procurement organization. The division may forward information under this subsection by mail or by electronic means. The division shall not maintain a record of the name or address of an individual who indicates a willingness to have such person's name placed on the organ donor registry after forwarding that information to the organ donor registry under this subsection. Information about an applicant's indication of a willingness to have such applicant's name placed on the organ donor registry that is obtained by the division and forwarded under this paragraph shall be confidential and not disclosed.

(h) Notwithstanding any other provisions of law, any offender under subsection (a)(1)(D) who held a valid driver's license on the effective date of this act may continue to operate motor vehicles until the next anniversary of the date of birth of such offender. Upon such date such driver's license shall expire and the offender shall be subject to the provisions of this section.

Sec. 27. K.S.A. 2006 Supp. 8-1325 is hereby amended to read as follows: 8-1325. (a) Every identification card shall expire, unless earlier canceled, on the sixth birthday of the applicant following the date of original issue, except as otherwise provided by K.S.A. 8-1329, and amendments thereto. Renewal of any identification card shall be made for a term of six years and shall expire in a like manner as the originally issued identification card, unless surrendered earlier. For any person who has only been issued an identification card, the division shall mail a notice of expiration or renewal at least 30 days prior to the expiration of such person's identification card at the address shown on such identification card. The division shall include with such notice, written information required under subsection (b). Any application for renewal received later than 90 days after expiration of the identification card shall be considered to be an application for an original identification card. The division, at the end of six years and six months after the issuance or renewal of an identification card, shall destroy any record of the card if it has expired and has not been renewed. The division shall require payment of a fee of \$14 for each identification card renewal, except that persons who are 65 or more years of age or who are persons with a disability, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of only \$10.

(b) The division shall provide the following information under subsection (a):

(1) Written information explaining the person's right to make an anatomical gift in accordance with K.S.A. 8-1328, and amendments thereto, and the *revised* uniform anatomical gift act, *sections 1 through 24 and K.S.A. 65-3219, and amendments thereto*;

(2) written information describing the organ donation registry program maintained by the Kansas federally designated organ procurement organization. The written information required under this paragraph shall include, in a type, size and format that is conspicuous in relation to the surrounding material, the address and telephone number of Kansas' federally designated organ procurement organization, along with an advisory to call such designated organ procurement organization with questions about the organ donor registry program;

(3) written information giving the applicant the opportunity to be placed on the organ donation registry described in paragraph (2);

(4) inform the applicant in writing that, if the applicant indicates under this subsection a willingness to have such applicant's name placed on the organ donor registry described in paragraph (2), the division will forward the applicant's name, gender, date of birth and most recent address to the organ donation registry maintained by the Kansas federally designated organ procurement organization, as required by paragraph (6);

(5) the division may fulfill the requirements of paragraph (4) by one or more of the following methods:

(A) Providing printed material enclosed with a mailed notice for an identification card renewal; or

(B) providing printed material to an applicant who personally applies for an identification card;

(6) if an applicant indicates a willingness under this subsection to have such applicant's name placed on the organ donor registry described, the division shall within 10 days forward the applicant's name, gender, date

of birth and address to the organ donor registry maintained by the Kansas federally designated organ procurement organization. The division may forward information under this subsection by mail or by electronic means. The division shall not maintain a record of the name or address of an individual who indicates a willingness to have such person's name placed on the organ donor registry after forwarding that information to the organ donor registry under this subsection. Information about an applicant's indication of a willingness to have such applicant's name placed on the organ donor registry that is obtained by the division and forwarded under this paragraph shall be confidential and not disclosed.

Sec. 28. K.S.A. 8-1328 is hereby amended to read as follows: (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued in accordance with K.S.A. 8-243 and amendments thereto and shall adequately describe the registrant. The identification card shall be sealed in transparent plastic or similar substance.

(b) *All Kansas identification cards issued to any person 16 years of age or older shall contain a form which provides a statement for making a gift of all or any part of the body in accordance with the revised uniform anatomical gift act, sections 1 through 24 and K.S.A. 65-3219, and amendments thereto, except as otherwise provided by this subsection. The statement to be effective shall be signed by the applicant in the presence of two witnesses who shall sign the statement in the presence of the donor. The gift becomes effective upon the death of the donor. Delivery of the identification card during the donor's lifetime is not necessary to make a valid gift. Any valid gift statement executed prior to July 1, 2007, shall remain effective until invalidated. The word "Donor" shall be placed on the front of an applicant's identification card, indicating that the statement for making an anatomical gift under this subsection has been executed by such applicant.*

Sec. 29. K.S.A. 58-654 is hereby amended to read as follows: 58-654.

(a) A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or nondurable.

(b) If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is not disabled may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsection (f) and (g). When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and purposes, the enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney. An attorney in fact vested with general powers shall be authorized to execute a power of attorney required by any governmental agency or other legal entity on behalf of the principal, naming such attorney in fact as the attorney in fact authorized to enter into any transaction with such agency or legal entity.

(c) If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is not disabled may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsection (f) and (g).

(d) Except as provided in subsections (f) and (g), an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, all rights, power and authority to act for the principal that the principal would have with respect to the principal's own person or property, including property owned jointly or by the entireties with another or others, as an adult who is not disabled. Without

limiting the foregoing an attorney in fact with general powers has, with respect to the subject or purposes of the power, complete discretion to make a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment, contract, note, security instrument, consent, receipt, release, proof of claim, petition or other pleading, tax document, notice, application, acknowledgment or other document necessary or convenient to implement or confirm any act, transaction or decision. An attorney in fact with general powers, whether power to act with respect to all lawful subjects and purposes, or only with respect to one or more express subjects or purposes, shall have the power, unless specifically denied by the terms of the power of attorney, to make, execute and deliver to or for the benefit of or at the request of a third person, who is requested to rely upon an action of the attorney in fact, an agreement indemnifying and holding harmless any third person or persons from any liability, claims or expenses, including legal expenses, incurred by any such third person by reason of acting or refraining from acting pursuant to the request of the attorney in fact. Such indemnity agreement shall be binding upon the principal who has executed such power of attorney and upon the principal's successor or successors in interest. No such indemnity agreement shall protect any third person from any liability, claims or expenses incurred by reason of the fact that, and to the extent that, the third person has honored the power of attorney for actions outside the scope of authority granted by the power of attorney. In addition, the attorney in fact has complete discretion to employ and compensate real estate agents, brokers, attorneys, accountants and subagents of all types to represent and act for the principal in any and all matters, including tax matters involving the United States government or any other government or taxing entity, including, but not limited to, the execution of supplemental or additional powers of attorney in the name of the principal in form that may be required or preferred by any such taxing entity or other third person, and to deal with any or all third persons in the name of the principal without limitation. No such supplemental or additional power of attorney shall broaden the scope of authority granted to the attorney in fact in the original power of attorney executed by the principal.

(e) An attorney in fact, who is granted general powers for all subjects and purposes or with respect to any express subjects or purposes, shall exercise the powers conferred according to the principal's instructions, in the principal's best interest, in good faith, prudently and in accordance with K.S.A. 58-655 and 58-656, and amendments thereto.

(f) Any power of attorney, whether or not it grants general powers for all subjects and purposes or with respect to express subjects or purposes, shall be construed to grant power or authority to an attorney in fact to carry out any of the actions described in this subsection only if the actions are expressly enumerated and authorized in the power of attorney. Any power of attorney may grant power or authority to an attorney in fact to carry out any of the following actions if the actions are expressly authorized in the power of attorney:

- (1) To execute, amend or revoke any trust agreement;
- (2) to fund with the principal's assets any trust not created by the principal;
- (3) to make or revoke a gift of the principal's property in trust or otherwise;
- (4) to disclaim a gift or devise of property to or for the benefit of the principal;
- (5) to create or change survivorship interests in the principal's property or in property in which the principal may have an interest. The inclusion of the authority set out in this paragraph shall not be necessary in order to grant to an attorney in fact acting under a power of attorney granting general powers with respect to all lawful subjects and purposes the authority to withdraw funds or other property from any account, contract or other similar arrangement held in the names of the principal and one or more other persons with any financial institution, brokerage company or other depository to the same extent that the principal would be authorized to do if the principal were present, not disabled and seeking to act in the principal's own behalf;
- (6) to designate or change the designation of beneficiaries to receive any property, benefit or contract right on the principal's death;

(7) to give or withhold consent to an autopsy or postmortem examination;

(8) to make a gift of, or decline to make a gift of, the principal's body parts under the *revised* uniform anatomical gift act, ~~K.S.A. 65-3209 through 65-3217~~ sections 1 through 24 and K.S.A. 65-3219, and amendments thereto;

(9) to nominate a guardian or conservator for the principal; and if so stated in the power of attorney, the attorney in fact may nominate such attorney in fact's self as such;

(10) to give consent on behalf of the principal to the sale, gift, transfer, mortgage or other alienation of the principal's homestead or interest therein if:

(A) The principal's spouse, personally or through such spouse's attorney in fact, has also consented to such alienation;

(B) the power of attorney specifically describes the homestead by reference to a legal description and the street address of the property; and

(C) the principal's spouse, in a written document duly acknowledged by the spouse, has stated such spouse's consent that the attorney in fact may alienate the interests, in whole or in part, of the principal in the described homestead and, further, the spouse agrees that the consent of the attorney in fact will constitute the consent of the principal required by Article 15, Section 9 of the Kansas Constitution. Nothing herein shall be construed as a limitation or abridgement of the right of the spouse of the principal to consent or withhold such spouse's consent to the alienation of the spouse's homestead, or any rights therein, under Article 15, section 9 of the Kansas Constitution;

(11) to designate one or more substitute or successor or additional attorneys in fact;

(12) to delegate any or all powers granted in a power of attorney pursuant to subsection (a) of K.S.A. 58-660, and amendments thereto; or

(13) to pay reasonable expenses incurred for the funeral and burial or other disposition of the body of the principal.

(g) No power of attorney, whether or not it delegates general powers, may delegate or grant power or authority to an attorney in fact to do or carry out any of the following actions for the principal:

(1) To make, publish, declare, amend or revoke a will for the principal;

(2) to make, execute, modify or revoke a declaration under K.S.A. 65-28,101 et seq., and amendments thereto, for the principal or to make, execute, modify or revoke a do not resuscitate directive under K.S.A. 65-4941, and amendments thereto, for the principal or to make, execute, modify or revoke a durable power of attorney for health care decisions pursuant to K.S.A. 58-625, et seq., and amendments thereto, for the principal;

(3) to require the principal, against the principal's will, to take any action or to refrain from taking any action; or

(4) to carry out any actions specifically forbidden by the principal while not under any disability or incapacity.

(h) A third person may freely rely on, contract and deal with an attorney in fact delegated general powers with respect to the subjects and purposes encompassed or expressed in the power of attorney without regard to whether the power of attorney expressly identifies the specific property, account, security, storage facility or matter as being within the scope of a subject or purpose contained in the power of attorney, and without regard to whether the power of attorney expressly authorizes the specific act, transaction or decision by the attorney in fact.

(i) It is the policy of this state that an attorney in fact acting pursuant to the provisions of a power of attorney granting general powers shall be accorded the same rights and privileges with respect to the personal welfare, property and business interests of the principal, and if the power of attorney enumerate some express subjects or purposes, with respect to those subjects or purposes, as if the principal was personally present and acting or seeking to act; and any provision of law and any purported waiver, consent or agreement executed or granted by the principal to the contrary shall be void and unenforceable.

(j) K.S.A. 58-650 through 58-665, and amendments thereto, shall not be construed to preclude any person or business enterprise from providing in a contract with the principal as to the procedure that thereafter

must be followed by the principal or the principal's attorney in fact in order to give a valid notice to the person or business enterprise of any modification or termination of the appointment of an attorney in fact by the principal. Any such contractual provision for notice shall be valid and binding on the principal and the principal's successors so long as such provision is reasonably capable of being carried out.

Sec. 30. K.S.A. 59-3075 is hereby amended to read as follows: 59-3075. (a) (1) The individual or corporation appointed by the court to serve as the guardian shall carry out diligently and in good faith, the general duties and responsibilities, and shall have the general powers and authorities, provided for in this section as well as any specific duties, responsibilities, powers and authorities assigned to the guardian by the court. In doing so, a guardian shall at all times be subject to the control and direction of the court, and shall act in accordance with the provisions of any guardianship plan filed with the court pursuant to K.S.A. 59-3076, and amendments thereto. The court shall have the authority to appoint counsel for the guardian, and the fees of such attorney may be assessed as costs pursuant to K.S.A. 59-3094, and amendments thereto.

(2) A guardian shall become and remain personally acquainted with the ward, the spouse of the ward and with other interested persons associated with the ward and who are knowledgeable about the ward, the ward's needs and the ward's responsibilities. A guardian shall exercise authority only as necessitated by the ward's limitations. A guardian shall encourage the ward to participate in making decisions affecting the ward. A guardian shall encourage the ward to act on the ward's own behalf to the extent the ward is able. A guardian shall encourage the ward to develop or regain the skills and abilities necessary to meet the ward's own essential needs and to otherwise manage the ward's own affairs. In making decisions on behalf of the ward, a guardian shall consider the expressed desires and personal values of the ward to the extent known to the guardian. A guardian shall strive to assure that the personal, civil and human rights of the ward are protected. A guardian shall at all times act in the best interests of the ward and shall exercise reasonable care, diligence and prudence.

(b) A guardian shall have the following general duties, responsibilities, powers and authorities:

(1) If the ward is a minor, to have the custody and control of the minor, and to provide for the minor's care, treatment, habilitation, education, support and maintenance;

(2) if the ward is an adult, to take charge of the person of the ward, and to provide for the ward's care, treatment, habilitation, education, support and maintenance;

(3) to consider and either provide on behalf of the ward necessary or required consents or refuse the same;

(4) to assure that the ward resides in the least restrictive setting appropriate to the needs of the ward and which is reasonably available;

(5) to assure that the ward receives any necessary and reasonably available medical care, consistent with the provisions of K.S.A. 59-3077, and amendments thereto, when applicable, and any reasonably available nonmedical care or other services as may be needed to preserve the health of the ward or to assist the ward to develop or retain skills and abilities;

(6) to promote and protect the comfort, safety, health and welfare of the ward;

(7) to make necessary determinations and arrangements for, and to give the necessary consents in regard to, the ward's funeral arrangements, burial or cremation, the performance of an autopsy upon the body of the ward, and anatomical gifts of the ward, subject to the provisions and limitations provided for in *section 9*, K.S.A. 65-2893 and ~~65-3210 and K.S.A. 65-1734~~, and amendments thereto; and

(8) to exercise all powers and to discharge all duties necessary or proper to implement the provisions of this section.

(c) A guardian shall not be obligated by virtue of the guardian's appointment to use the guardian's own financial resources for the support of the ward.

(d) A guardian shall not be liable to a third person for the acts of the ward solely by virtue of the guardian's appointment, nor shall a guardian who exercises reasonable care in selecting a third person to provide any medical or other care, treatment or service for the ward be liable for any injury to the ward resulting from the wrongful conduct of that third per-

son.

(e) A guardian shall not have the power:

(1) To prohibit the marriage or divorce of the ward;

(2) to consent, on behalf of the ward, to the termination of the ward's parental rights;

(3) to consent to the adoption of the ward, unless approved by the court;

(4) to consent, on behalf of the ward, to any psychosurgery, removal of any bodily organ, or amputation of any limb, unless such surgery, removal or amputation has been approved in advance by the court, except in an emergency and when necessary to preserve the life of the ward or to prevent serious and irreparable impairment to the physical health of the ward;

(5) to consent, on behalf of the ward, to the sterilization of the ward, unless approved by the court following a due process hearing held for the purposes of determining whether to approve such, and during which hearing the ward is represented by an attorney appointed by the court;

(6) to consent, on behalf of the ward, to the performance of any experimental biomedical or behavioral procedure on the ward, or for the ward to be a participant in any biomedical or behavioral experiment, without the prior review and approval of such by either an institutional review board as provided for in title 45, part 46 of the code of federal regulations, or if such regulations do not apply, then by a review committee established by the agency, institution or treatment facility at which the procedure or experiment is proposed to occur, composed of members selected for the purposes of determining whether the proposed procedure or experiment:

(A) Does not involve any significant risk of harm to the physical or mental health of the ward, or the use of aversive stimulants, and is intended to preserve the life or health of the ward or to assist the ward to develop or regain skills or abilities; or

(B) involves a significant risk of harm to the physical or mental health of the ward, or the use of an aversive stimulant, but that the conducting of the proposed procedure or experiment is intended either to preserve the life of the ward, or to significantly improve the quality of life of the ward, or to assist the ward to develop or regain significant skills or abilities, and that the guardian has been fully informed concerning the potential risks and benefits of the proposed procedure or experiment or of any aversive stimulant proposed to be used, and as to how and under what circumstances the aversive stimulant may be used, and has specifically consented to such;

(7) to consent, on behalf of the ward, to the withholding or withdrawal of life-saving or life sustaining medical care, treatment, services or procedures, except:

(A) In accordance with the provisions of any declaration of the ward made pursuant to the provisions of K.S.A. 65-28,101 through 65-28,109, and amendments thereto; or

(B) if the ward, prior to the court's appointment of a guardian pursuant to K.S.A. 59-3067, and amendments thereto, shall have executed a durable power of attorney for health care decisions pursuant to K.S.A. 58-629, and amendments thereto, and such shall not have been revoked by the ward prior thereto, and there is included therein any provision relevant to the withholding or withdrawal of life-saving or life-sustaining medical care, treatment, services or procedures, then the guardian shall have the authority to act as provided for therein, even if the guardian has revoked or otherwise amended that power of attorney pursuant to the authority of K.S.A. 58-627, and amendments thereto, or the guardian may allow the agent appointed by the ward to act on the ward's behalf if the guardian has not revoked or otherwise amended that power of attorney; or

(C) in the circumstances where the ward's treating physician shall certify in writing to the guardian that the ward is in a persistent vegetative state or is suffering from an illness or other medical condition for which further treatment, other than for the relief of pain, would not likely prolong the life of the ward other than by artificial means, nor would be likely to restore to the ward any significant degree of capabilities beyond those the ward currently possesses, and which opinion is concurred in by either a second physician or by any medical ethics or similar committee to which the health care provider has access established for the purposes of re-

viewing such circumstances and the appropriateness of any type of physician's order which would have the effect of withholding or withdrawing life-saving or life sustaining medical care, treatment, services or procedures. Such written certification shall be approved by an order issued by the court;

(8) to exercise any control or authority over the ward's estate, except if the court shall specifically authorize such. The court may assign such authority to the guardian, including the authority to establish certain trusts as provided in K.S.A. 59-3080, and amendments thereto, and may waive the requirement of the posting of a bond, only if:

(A) Initially, the combined value of any funds and property in the possession of the ward or in the possession of any other person or entity, but which the ward is otherwise entitled to possess, equals \$10,000 or less; and

(B) either the court requires the guardian to report to the court the commencement of the exercising of such authority, or requires the guardian to specifically request of the court the authority to commence the exercise of such authority, as the court shall specify; and

(C) the court also requires the guardian, whenever the combined value of such funds and property exceeds \$10,000, to:

(i) File a guardianship plan as provided for in K.S.A. 59-3076, and amendments thereto, which contains elements similar to those which would be contained in a conservatorship plan as provided for in K.S.A. 59-3078, and amendments thereto;

(ii) petition the court for appointment of a conservator as provided for in K.S.A. 59-3058, 59-3059 or 59-3060, and amendments thereto; or

(iii) notify the court as the court shall specify that the value of the conservatee's estate has equaled or exceeded \$10,000, if the court has earlier appointed a conservator but did not issue letters of conservatorship pending such notification; and

(9) to place the ward in a treatment facility as defined in K.S.A. 59-3077, and amendments thereto, except if authorized by the court as provided for therein.

(f) The guardian shall file with the court reports concerning the status of the ward and the actions of the guardian as the court shall direct pursuant to K.S.A. 59-3083, and amendments thereto.

Sec. 31. K.S.A. 2006 Supp. 65-1728 is hereby amended to read as follows: 65-1728. For the purpose of removing an eye or part thereof, any embalmer licensed in accordance with the provisions of article 17 of chapter 65 of the Kansas Statutes Annotated, and acts amendatory thereof, a licensed nurse, technician employed by a nationally certified eye bank, licensed optometrist, attendant as defined under K.S.A. 65-6112 and amendments thereto or physician assistant, who has completed a course in eye enucleation at a school certified by the department of ophthalmology, college of medicine of the university of Kansas school of medicine, and holds a valid certificate of competence from such certified school, or a person licensed to practice medicine and surgery is hereby authorized to enucleate eyes from any body when the gift of such eye has been made in accordance with the terms of the ~~Kansas~~ *revised uniform anatomical gift act (K.S.A. 65-3209 et seq.) (sections 1 through 24 and K.S.A. 65-3219, and amendments thereto)*. Persons certified in accordance with this section and persons licensed to practice medicine and surgery who perform the enucleation of eyes in accordance with the provisions of ~~K.S.A. 65-3209 et seq. sections 1 through 24 and K.S.A. 65-3219, and amendments thereto~~, shall incur no liability, civil or criminal, for his acts in performance of enucleation of eyes.

Sec. 32. K.S.A. 65-3219 is hereby amended to read as follows: 65-3219. (a) Information obtained under K.S.A. 8-247 and 8-1325, and amendments thereto, from the division of vehicles by the Kansas federally designated organ procurement organization shall be used for the purpose of establishing a statewide organ and tissue donor registry accessible to in-state recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Kansas resident is a donor of an anatomical gift and is not located in Kansas at the time of death or immediately before the death of the donor. No organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund-raising. Organ and tissue donor registry information shall not be further disseminated unless authorized in this section or by federal

law. Dissemination of organ and tissue donor registry information may be made by the Kansas federally designated organ procurement organization to a recognized in-state procurement agency for other tissue recovery, or an out-of-state federally designated organ procurement agency.

(b) The Kansas federally designated organ procurement organization may acquire donor information from sources other than the division of vehicles.

(c) All costs associated with the creation and maintenance of the organ and tissue donor registry shall be paid by the Kansas federally designated organ procurement organization. Such organization shall also pay the costs of providing and maintaining the written information and educational materials required to be distributed under subsection (g) of K.S.A. 8-247, and amendments thereto, and under subsection (b) of K.S.A. 8-1325, and amendments thereto.

(d) An individual does not need to participate in the organ and tissue donor registry to be a donor of organs or tissue. The registry is to facilitate organ and tissue donations and not inhibit Kansans from being donors upon death.

(e) *This section shall be a part of and supplemental to the revised uniform anatomical gift act.*

Sec. 33. K.S.A. 8-1328, 58-654, 59-3075, 65-3209, 65-3210, 65-3211, 65-3212, 65-3213, 65-3214, 65-3215, 65-3216, 65-3217, 65-3218 and 65-3219 and K.S.A. 2006 Supp. 8-243, 8-247, 8-1325 and 65-1728 are hereby repealed.

Sec. 34. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 16, 2007.
