

PROBATE, ESTATES AND FIDUCIARIES CODE (20 PA.C.S.) - OMNIBUS
AMENDMENTS

Act of Oct. 23, 2018, P.L. 594, No. 90

Cl. 20

Session of 2018

No. 2018-90

SB 180

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, in ownership of property and legal title and equitable estate, further providing for right to dispose of a decedent's remains; in health care, further providing for example; and, in anatomical gifts, further providing for definitions, providing for scope, further providing for persons who may execute anatomical gift, for persons who may become donees and purposes for which anatomical gifts may be made, for manner of executing anatomical gifts, for rights and duties at death, for requests for anatomical gifts, for use of driver's license or identification card to indicate organ or tissue donation, for The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions, for The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund, for confidentiality requirement and for prohibited activities, providing for promotion of organ and tissue donation, establishing the Donate Life PA Registry, providing for facilitation of anatomical gift from decedent whose death is under investigation, for notification by coroners and medical examiners to district attorneys, for discretionary notification by coroner or medical examiner, for collaboration among departments and organ procurement organizations, for information relative to organ and tissue donation, for requirements for physician and nurse training relative to organ and tissue donation and recovery, for Department of Transportation, for Department of Corrections, for study of organ procurement organizations and for relation to Electronic Signatures in Global and National Commerce Act, repealing provisions relating to corneal transplants and providing for vascularized composite allografts.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 305(a), (a.1) and (d)(2) and 5471 of Title 20 of the Pennsylvania Consolidated Statutes are amended to read:

§ 305. Right to dispose of a decedent's remains.

(a) General rule.--Except as specified in subsection (a.1), the determination of the final disposition of a decedent's remains shall be as set forth in this section unless otherwise specifically provided by waiver and agreement of the person entitled to make such determination under this section, subject to the provisions of a valid will executed by the decedent and [section] **sections 8611(a) (relating to persons who may execute anatomical gift) and 8654(1) (relating to requirement of explicit, specific and separate authorization).**

(a.1) Exception for members of the armed forces.--The determination of the final disposition of a decedent's remains shall be as set forth in this section unless otherwise

specifically provided by a DD Form 93 executed later in time than a valid will executed by the decedent or a waiver and agreement of the person entitled to make such determination under this section, subject to the provisions of [section] **sections 8611(a) and 8654(1)**.

* * *

(d) Procedure.--Where a petition alleging enduring estrangement, incompetence, contrary intent or waiver and agreement is made within 48 hours of the death or discovery of the body of the decedent, whichever is later, a court may order that no final disposition of the decedent's remains take place until a final determination is made on the petition. Notice to each person with equal or higher precedence than the petitioner to the right to dispose of the decedent's remains and to his attorney if known and to the funeral home or other institution where the body is being held must be provided concurrently with the filing of the petition. A suitable bond may be required by the court.

* * *

(2) If two [or more] persons with equal standing as next of kin disagree on disposition of the decedent's remains, the authority to dispose shall be determined by the court, with preference given to the person who had the closest relationship with the deceased. **If more than two persons with equal standing as next of kin disagree on disposition of the decedent's remains, the authority to dispose shall be determined by the majority. Where two or more persons with equal standing cannot reach a majority decision, the court shall make a final determination on disposition of the decedent's remains.**

* * *

§ 5471. Example.

The following is an example of a document that combines a living will and health care power of attorney:

DURABLE HEALTH CARE POWER OF ATTORNEY
AND HEALTH CARE TREATMENT INSTRUCTIONS
(LIVING WILL)

PART I

INTRODUCTORY REMARKS ON
HEALTH CARE DECISION MAKING

You have the right to decide the type of health care you want.

Should you become unable to understand, make or communicate decisions about medical care, your wishes for medical treatment are most likely to be followed if you express those wishes in advance by:

(1) naming a health care agent to decide treatment for you; and

(2) giving health care treatment instructions to your health care agent or health care provider.

An advance health care directive is a written set of instructions expressing your wishes for medical treatment.
[It]

NOTICE ABOUT ANATOMICAL DONATION

This document may also contain directions regarding whether you wish to donate an organ, tissue or eyes. Under Pennsylvania law, donating a part of the body for transplantation or research is a voluntary act. You do not have to donate an organ, tissue, eye or other part of the body. However, it is important that you make your wishes about anatomical donation known, just as it is important to make your choices about end-of-life care known.

Surgeons have made great strides in the field of organ donation and can now transplant hands, facial tissue and limbs. A hand, facial tissue and a limb are examples of what is known as a vascularized composite allograft. Under Pennsylvania law, explicit and specific consent to donate hands, facial tissue, limbs or other vascularized composite allografts must be given. You may use this document to make clear your wish to donate or not to donate hands, facial tissue or limbs.

Under Pennsylvania law, the organ donor designation on the driver's license authorizes the individual to donate what we traditionally think of as organs (heart, lung, liver, kidney) and tissue and does not authorize the individual to donate hands, facial tissue, limbs or other vascularized composite allografts.

Detailed information about anatomical donation, including the procedure used to recover organs, tissues and eyes, can be found on the Department of Transportation's Internet website. Information about the donation of hands, facial tissue and limbs can also be found on the Department of Transportation's Internet website.

You may wish to consult with your physician or your attorney to determine whether the procedure for making an anatomical donation is compatible with fulfilling your specific choices for end-of-life care. In addition, you may want to consult with clergy regarding whether you want to donate an organ, a hand, facial tissue or limb or other part of the body. It is important to understand that donating a hand, limb or facial tissue may have an impact on funeral arrangements and that an open casket may not be possible.

An advance health care directive may contain a health care power of attorney, where you name a person called a "health care agent" to decide treatment for you, and a living will, where you tell your health care agent and health care providers your choices regarding the initiation, continuation, withholding or withdrawal of life-sustaining treatment and other specific directions **regarding end-of-life care and your views regarding organ and tissue donation.**

You may limit your health care agent's involvement in deciding your medical treatment so that your health care agent will speak for you only when you are unable to speak for yourself or you may give your health care agent the power to speak for you immediately. This combined form gives your health care agent the power to speak for you only when you are unable to speak for yourself. A living will cannot be followed unless your attending physician determines that you lack the ability to understand, make or communicate health care decisions for yourself and you are either permanently unconscious or you have an end-stage medical condition, which is a condition that will result in death despite the introduction or continuation of medical treatment. You, and not your health care agent, remain responsible for the cost of your medical care.

If you do not write down your wishes about your health care in advance, and if later you become unable to understand, make or communicate these decisions, those wishes may not be honored because they may remain unknown to others.

A health care provider who refuses to honor your wishes about health care must tell you of its refusal and help to transfer you to a health care provider who will honor your wishes.

You should give a copy of your advance health care directive (a living will, health care power of attorney or a document containing both) to your health care agent, your physicians, family members and others whom you expect would likely attend to your needs if you become unable to understand, make or communicate decisions about medical care. If your health care wishes change, tell your physician and write a new advance health care directive to replace your old one. **If your wishes about donating an organ, tissue or eyes change, tell your physician and write a new advance health care directive to replace your old one. If you do not wish to donate a hand, facial tissue or limb, it is important to make that clear in your advance health care directive or health care power of attorney, or both.** It is important in selecting a health care agent that you choose a person you trust who is likely to be available in a medical situation where you cannot make decisions for yourself. You should inform that person that you have appointed him or her as your health care agent and discuss your beliefs and values with him or her so that your health care agent will understand your health care objectives[.], **including whether you want to limit or withhold life-sustaining measures in the event that you become permanently unconscious or have an end-stage medical condition.** You should also tell your health care agent **whether you want to donate organs, tissue, eyes or other parts of the body and whether you want to make a donation of your hands, facial tissue or limbs.** It is important to understand that if you decide to donate a hand, limb or facial tissue it may impact funeral arrangements and that an open casket may not be possible.

You may wish to consult with knowledgeable, trusted individuals such as family members, your physician or clergy when considering an expression of your values and health care wishes. You are free to create your own advance health care directive to convey your wishes regarding medical treatment. The following form is an example of an advance health care directive that combines a health care power of attorney with a living will.

NOTES ABOUT THE USE OF THIS FORM

If you decide to use this form or create your own advance health care directive, you should consult with your physician and your attorney to make sure that your wishes are clearly expressed and comply with the law.

If you decide to use this form but disagree with any of its statements, you may cross out those statements.

You may add comments to this form or use your own form to help your physician or health care agent decide your medical care.

This form is designed to give your health care agent broad powers to make health care decisions for you whenever you cannot make them for yourself. It is also designed to express a desire to limit or authorize care if you have an end-stage medical condition or are permanently unconscious. If you do not desire to give your health care agent broad powers, or you do not wish to limit your care if you have an end-stage medical condition or are permanently unconscious, you may wish to use a different form or create your own. **YOU SHOULD ALSO USE A DIFFERENT FORM IF YOU WISH TO EXPRESS YOUR PREFERENCES IN MORE DETAIL THAN THIS FORM ALLOWS OR IF YOU WISH FOR YOUR HEALTH CARE AGENT TO BE ABLE**

TO SPEAK FOR YOU IMMEDIATELY. In these situations, it is particularly important that you consult with your attorney and physician to make sure that your wishes are clearly expressed[.], **including whether you want to limit or withhold life-sustaining measures in the event that you become permanently unconscious or have an end-stage medical condition and whether you wish to donate a part of the body for transplantation or research. You should also clearly express whether or not you wish to donate hands, facial tissue or limbs.**

This form allows you to tell your health care agent your goals if you have an end-stage medical condition or other extreme and irreversible medical condition, such as advanced Alzheimer's disease. Do you want medical care applied aggressively in these situations or would you consider such aggressive medical care burdensome and undesirable?

You may choose whether you want your health care agent to be bound by your instructions or whether you want your health care agent to be able to decide at the time what course of treatment the health care agent thinks most fully reflects your wishes and values.

If you are a woman and diagnosed as being pregnant at the time a health care decision would otherwise be made pursuant to this form, the laws of this Commonwealth prohibit implementation of that decision if it directs that life-sustaining treatment, including nutrition and hydration, be withheld or withdrawn from you, unless your attending physician and an obstetrician who have examined you certify in your medical record that the life-sustaining treatment:

(1) will not maintain you in such a way as to permit the continuing development and live birth of the unborn child;

(2) will be physically harmful to you; or

(3) will cause pain to you that cannot be alleviated by medication.

A physician is not required to perform a pregnancy test on you unless the physician has reason to believe that you may be pregnant.

Pennsylvania law protects your health care agent and health care providers from any legal liability for following in good faith your wishes as expressed in the form or by your health care agent's direction. It does not otherwise change professional standards or excuse negligence in the way your wishes are carried out. If you have any questions about the law, consult an attorney for guidance.

This form and explanation is not intended to take the place of specific legal or medical advice for which you should rely upon your own attorney and physician.

PART II

DURABLE HEALTH CARE POWER OF ATTORNEY

I,, of County, Pennsylvania, appoint the person named below to be my health care agent to make health and personal care decisions for me.

Effective immediately and continuously until my death or revocation by a writing signed by me or someone authorized to make health care treatment decisions for me, I authorize all health care providers or other covered entities to disclose to my health care agent, upon my agent's request, any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and what is otherwise private, privileged,

protected or personal health information, such as health information as defined and described in the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936), the regulations promulgated thereunder and any other State or local laws and rules. Information disclosed by a health care provider or other covered entity may be redisclosed and may no longer be subject to the privacy rules provided by 45 C.F.R. Pt. 164.

The remainder of this document will take effect when and only when I lack the ability to understand, make or communicate a choice regarding a health or personal care decision as verified by my attending physician. My health care agent may not delegate the authority to make decisions.

MY HEALTH CARE AGENT HAS ALL OF THE FOLLOWING POWERS SUBJECT TO THE HEALTH CARE TREATMENT INSTRUCTIONS THAT FOLLOW IN PART III (CROSS OUT ANY POWERS YOU DO NOT WANT TO GIVE YOUR HEALTH CARE AGENT):

1. To authorize, withhold or withdraw medical care and surgical procedures.

2. To authorize, withhold or withdraw nutrition (food) or hydration (water) medically supplied by tube through my nose, stomach, intestines, arteries or veins.

3. To authorize my admission to or discharge from a medical, nursing, residential or similar facility and to make agreements for my care and health insurance for my care, including hospice and/or palliative care.

4. To hire and fire medical, social service and other support personnel responsible for my care.

5. To take any legal action necessary to do what I have directed.

6. To request that a physician responsible for my care issue a do-not-resuscitate (DNR) order, including an out-of-hospital DNR order, and sign any required documents and consents.

7. To authorize or refuse to authorize donation of what we traditionally think of as organs (for example, heart, lung, liver, kidney), tissue, eyes or other parts of the body.

8. To authorize or refuse to authorize donation of hands, facial tissue, limbs or other vascularized composite allografts.

APPOINTMENT OF HEALTH CARE AGENT

I appoint the following health care agent:

Health Care Agent:.....
(Name and relationship)

Address:.....

.....

Telephone Number: Home..... Work.....

E-mail:.....

IF YOU DO NOT NAME A HEALTH CARE AGENT, HEALTH CARE PROVIDERS WILL ASK YOUR FAMILY OR AN ADULT WHO KNOWS YOUR PREFERENCES AND VALUES FOR HELP IN DETERMINING YOUR WISHES FOR TREATMENT. NOTE THAT YOU MAY NOT APPOINT YOUR DOCTOR OR OTHER HEALTH CARE PROVIDER AS YOUR HEALTH CARE AGENT UNLESS RELATED TO YOU BY BLOOD, MARRIAGE OR ADOPTION.

If my health care agent is not readily available or if my health care agent is my spouse and an action for divorce is filed by either of us after the date of this document, I appoint the person or persons named below in the order named. (It is helpful, but not required, to name alternative health care agents.)

First Alternative Health Care Agent:.....

(Name and relationship)

Address:.....

.....

Telephone Number: Home..... Work.....

E-mail:.....

Second Alternative Health Care Agent:.....

(Name and relationship)

Address:.....

.....

Telephone Number: Home..... Work.....

E-mail:.....

GUIDANCE FOR HEALTH CARE AGENT (OPTIONAL) GOALS

If I have an end-stage medical condition or other extreme irreversible medical condition, my goals in making medical decisions are as follows (insert your personal priorities such as comfort, care, preservation of mental function, etc.):.....

.....

.....

.....

SEVERE BRAIN DAMAGE OR BRAIN DISEASE

If I should suffer from severe and irreversible brain damage or brain disease with no realistic hope of significant recovery, I would consider such a condition intolerable and the application of aggressive medical care to be burdensome. I therefore request that my health care agent respond to any intervening (other and separate) life-threatening conditions in the same manner as directed for an end-stage medical condition or state of permanent unconsciousness as I have indicated below.

Initials.....I agree

Initials.....I disagree

PART III

HEALTH CARE TREATMENT INSTRUCTIONS IN THE EVENT OF END-STAGE MEDICAL CONDITION OR PERMANENT UNCONSCIOUSNESS (LIVING WILL)

The following health care treatment instructions exercise my right to make my own health care decisions. These instructions are intended to provide clear and convincing evidence of my wishes to be followed when I lack the capacity to understand, make or communicate my treatment decisions:

IF I HAVE AN END-STAGE MEDICAL CONDITION (WHICH WILL RESULT IN MY DEATH, DESPITE THE INTRODUCTION OR CONTINUATION OF MEDICAL TREATMENT) OR AM PERMANENTLY UNCONSCIOUS SUCH AS AN IRREVERSIBLE COMA OR AN IRREVERSIBLE VEGETATIVE STATE AND THERE IS NO REALISTIC HOPE OF SIGNIFICANT RECOVERY, ALL OF THE FOLLOWING APPLY (CROSS OUT ANY TREATMENT INSTRUCTIONS WITH WHICH YOU DO NOT AGREE):

1. I direct that I be given health care treatment to relieve pain or provide comfort even if such treatment might shorten my life, suppress my appetite or my breathing, or be habit forming.

2. I direct that all life prolonging procedures be withheld or withdrawn. **You may want to consult with your physician and attorney in order to determine whether your designated choices regarding end-of-life care are compatible with anatomical donation. In order to donate an organ your body may need to be maintained on artificial support after you have been declared dead to facilitate anatomical donation. Detailed information about the procedure for being declared brain dead or dead by lack of cardiac function and**

information about organ donation can be found on the Department of Transportation's publicly accessible Internet website.

3. I specifically do not want any of the following as life prolonging procedures: (If you wish to receive any of these treatments, write "I do want" after the treatment)

- heart-lung resuscitation (CPR).....
- mechanical ventilator (breathing machine).....
- dialysis (kidney machine).....
- surgery.....
- chemotherapy.....
- radiation treatment.....
- antibiotics.....

Please indicate whether you want nutrition (food) or hydration (water) medically supplied by a tube into your nose, stomach, intestine, arteries, or veins if you have an end-stage medical condition or are permanently unconscious and there is no realistic hope of significant recovery. (Initial only one statement.)

TUBE FEEDINGS

.....I want tube feedings to be given

OR

NO TUBE FEEDINGS

.....I do not want tube feedings to be given.

4. If I have authorized donation of an organ (such as a heart, liver or lung) or a vascularized composite allograft in the next section of this document, I authorize the use of artificial support, including a ventilator, for a limited period of time after I am declared dead to facilitate the donation.

5. I specifically do not want to be on artificial support after I am declared dead.....

HEALTH CARE AGENT'S USE OF INSTRUCTIONS

(INITIAL ONE OPTION ONLY).

.....My health care agent must follow these instructions.

OR

.....These instructions are only guidance.

My health care agent shall have final say and may override any of my instructions. (Indicate any exceptions).....

If I did not appoint a health care agent, these instructions shall be followed.

LEGAL PROTECTION

Pennsylvania law protects my health care agent and health care providers from any legal liability for their good faith actions in following my wishes as expressed in this form or in complying with my health care agent's direction. On behalf of myself, my executors and heirs, I further hold my health care agent and my health care providers harmless and indemnify them against any claim for their good faith actions in recognizing my health care agent's authority or in following my treatment instructions.

[ORGAN DONATION (INITIAL ONE OPTION ONLY.)

.....I consent to donate my organs and tissues at the time of my death for the purpose of transplant, medical study or education. (Insert any limitations you desire on donation of specific organs or tissues or uses for donation of organs and tissues.)

OR

..... I do not consent to donate my organs or tissues at the time of my death.]

SIGNATURE.....

INFORMATION ABOUT ANATOMICAL DONATION

Donating an organ or other part of the body is a voluntary act. Under Pennsylvania law, you do not have to donate an organ or any other part of your body. It is important to know the effect of organ donation on your decisions about end-of-life care so that your wishes about end-of-life care will be fulfilled. If someone wishes to become an organ donor, the person may be kept on artificial support after the person has been declared dead to facilitate anatomical donation. Detailed information about the procedure for recovering organs and other parts of the body and detailed information about brain death and cardiac death may be found on the Department of Transportation's publicly accessible Internet website.

Under Pennsylvania law, the organ donor designation on the driver's license authorizes the individual to donate what we traditionally think of as organs (for example, heart, lung, liver, kidney) and tissue and does not authorize the individual to donate hands, facial tissue, limbs or other vascularized composite allografts.

Under Pennsylvania law, explicit and specific consent to donate hands, facial tissue, limbs and other vascularized composite allografts is needed. Donation of these parts of the body is voluntary. Information about the procedure to transplant hands, facial tissue and limbs can be found on the Department of Transportation's publicly accessible Internet website. It is important to know that donating a hand, limb or facial tissue may impact funeral arrangements and that an open casket may not be possible.

ORGAN DONATION

.....I consent to making an anatomical gift. This gift does not include hands, facial tissue, limbs or other vascularized composite allografts. I understand that if I want to donate a hand, facial tissue, limb or other vascularized composite allograft, there is another place in this document for me to do so. I also understand the hospital may provide artificial support, which may include a ventilator, after I am declared dead in order to facilitate donation. I consent to making a gift of the following parts of my body for transplantation or research (please insert any limitations you desire on donation of specific organs or tissues or eyes or any limitation on the use of a donated part of the body):

.....
.....
.....

SIGNATURE.....DATE.....

GIFT OF HANDS, FACIAL TISSUE, LIMBS AND OTHER VASCULARIZED COMPOSITE ALLOGRAFTS

.....I consent to making a gift of my hands, facial tissue, limbs or other vascularized composite allografts. I also understand that I have the option of requesting reconstruction of my body in preparation for burial and that anonymity of identity may not be able to be protected in the case of donation of hands, facial tissue or limbs. I also understand that burial arrangements may be affected and that an open casket may not be possible. I also understand that the hospital may provide artificial support, which may

include a ventilator, after I am declared dead in order to facilitate donation.

Please insert any limitations you desire on donation of hands, facial tissue, limbs or other vascularized composite allografts and whether you request reconstructive surgery before burial:

.....
.....
.....
SIGNATURE.....DATE.....

.....I do not consent to donating my organs, tissues or any other part of my body, including hands, facial tissue, limbs or other vascularized composite allografts. This provision serves as a refusal to donate any part of my body. This provision also serves as a revocation of any prior decision I have made to donate organs, tissues or other parts of my body, including hands, facial tissue, limbs or other vascularized composite allograft made in a prior document, including a driver's license, will, power of attorney, health care power of attorney or other document.

SIGNATURE.....DATE.....

Having carefully read this document, I have signed it this.....day of....., 20..., revoking all previous health care powers of attorney and health care treatment instructions.

.....
(SIGN FULL NAME HERE FOR HEALTH CARE POWER OF ATTORNEY AND HEALTH CARE TREATMENT INSTRUCTIONS)

WITNESS:.....

WITNESS:.....

Two witnesses at least 18 years of age are required by Pennsylvania law and should witness your signature in each other's presence. A person who signs this document on behalf of and at the direction of a principal may not be a witness. (It is preferable if the witnesses are not your heirs, nor your creditors, nor employed by any of your health care providers.)

NOTARIZATION (OPTIONAL)

(Notarization of document is not required by Pennsylvania law, but if the document is both witnessed and notarized, it is more likely to be honored by the laws of some other states.)

On this.....day of, 20..., before me personally appeared the aforesaid declarant and principal, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of....., State of..... the day and year first above written.

.....
Notary Public My commission expires

Section 2. The definitions of "advisory committee," "bank or storage facility," "decedent," "organ procurement organization" and "part" in section 8601 of Title 20 are amended and the section is amended by adding definitions to read: § 8601. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Adult." An individual who is at least 18 years of age.

"Advance health care directive." As defined in section 5422 (relating to definitions).

"Advisory committee." The Organ and Tissue Donation Advisory Committee established under section 8622 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund).

"Agent." Any of the following:

(1) A health care agent authorized to make health care decisions on a principal's behalf under Subchapter C of Chapter 54 (relating to health care agents and representatives).

(2) An individual expressly authorized to make an anatomical gift on a principal's behalf by any other record signed by the principal.

"Anatomical donation." An anatomical gift.

"Anatomical gift." 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. The term does not include vascularized composite allografts, including a human hand, facial tissue or limb.

["Bank or storage facility." A facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.]

* * *

"Decedent." [A deceased individual, including a stillborn infant or fetus.] 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 other laws, a fetus. The term does not include a blastocyst, embryo or fetus that is the subject of an induced abortion.

"Document of gift." A donor card or other record used to make, amend or revoke an anatomical gift. The term includes a statement or symbol on a driver's license or identification card or in a donor registry.

"Donate Life PA Registry." That subset of persons in the Department of Transportation's driver's license and photo identification card database who have elected to include the donor designation on their record. This term shall not refer to a separate database.

* * *

"Donor registry." A database which contains records of anatomical gifts. The term includes the Donate Life PA Registry.

"Eye bank." 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.

* * *

"Hospital administrator." Any individual appointed by a hospital's governing body to act on behalf of the hospital's governing body in the overall management of the hospital. The term includes a designee of the individual who is authorized by the hospital to exercise supervisory authority.

"Know." To have actual knowledge. When the word "known" is used as an adjective to modify a term, the meaning is that there is actual knowledge about the modified term.

"Minor." An individual who is under 18 years of age.

"Organ." A human kidney, liver, heart, lung, pancreas, esophagus, stomach, small or large intestine or any portion of the gastrointestinal tract. The term also includes blood vessels recovered during the recovery of such organs if the vessels are intended for use in organ transplantation and labeled, "for use in organ transplant only." The term does not include a human

hand, facial tissue, limb or other vascularized composite allograft.

"Organ procurement organization." An organization [that meets the requirements of section 371 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 273).] **designated for the region by the United States Secretary of Health and Human Services as an organ procurement organization.**

"Part." Organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body. **The term does not include a human hand, facial tissue, limb or other vascularized composite allograft.**

* * *

"Person authorized or obligated to dispose of a decedent's body." Any of the following, without regard to order of priority:

(1) A coroner or medical examiner having jurisdiction over the decedent's body.

(2) A warden or director of a correctional facility where the decedent was incarcerated.

(3) A hospital administrator of the hospital where the decedent's death was pronounced.

(4) Any other person authorized or under obligation to dispose of the decedent's body.

* * *

"Reasonably available." Able to be contacted by an organ procurement organization with reasonable effort and willing and able to exercise the decision to refuse or to authorize anatomical donation in a timely manner consistent with existing medical criteria necessary to make an anatomical gift.

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

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

"Recovery procedure." The process of removing cells, tissues and organs from a decedent. The term does not include the recovery of vascularized composite allografts, including recovery of a human hand, facial tissue or limb.

* * *

"Tissue." 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. The term also does not include vascularized composite allografts, including a human hand, facial tissue or limb.

"Tissue bank." 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.

* * *

"Vascularized composite allograft." A human hand, facial tissue, limb and other parts of the body which require blood flow by surgical connection of blood vessels to function after transplantation and which contain multiple tissue types, recovered from a human donor as an anatomical or structural unit, minimally manipulated, for homologous use, not combined with another article such as a device, susceptible to ischemia and susceptible to allograft rejection. The term also includes a part of the body specified as a vascularized composite allograft by the United States Secretary of Health and Human Services by regulation, in accordance with the National Organ Transplant Act (Public Law 98-507, 42 U.S.C. § 274e). The term does not include an organ, part, eye or tissue.

Section 3. Title 20 is amended by adding a section to read:
§ 8610. **Scope of subchapter.**

Nothing in this subchapter shall be construed to authorize the donation of vascularized composite allografts, including hand, facial tissue and limb transplants, from an individual whose death is imminent or who has died at the hospital. Donation of vascularized composite allografts from an individual whose death is imminent or who has died at the hospital shall be in accordance with Subchapter D (relating to hands, facial tissue, limbs and other vascularized composite allografts).

Section 4. Section 8611(a), (b) and (c) of Title 20 are amended and the section is amended by adding subsections to read:

§ 8611. Persons who may execute anatomical gift.

(a) General rule.--Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 8612 (relating to persons who may become donees; purposes for which anatomical gifts may be made), the gift to take effect upon death. Any agent acting under a power of attorney, **health care power of attorney or other document** which **expressly** authorizes the agent to make anatomical gifts may effectuate a gift for any purpose specified in section 8612. Any individual who is a minor and 16 years of age or older may effectuate a gift for any purpose specified in section 8612, provided parental or guardian consent is deemed given. Parental or guardian consent shall be noted on the minor's donor card, application for the donor's learner's permit or driver's license or other document of gift. A gift of the whole body shall be invalid unless made in writing at least 15 days prior to the date of death or consent is obtained from the legal next of kin. Where there are adult children of the deceased who are not children of the surviving spouse, their consent shall also be required for a gift of the whole body for anatomical study.

(b) [Others entitled] **Entitled** to donate anatomy of decedent.--[Any] **Subject to subsection (b.1), any** of the following persons **who are reasonably available**, in order of priority stated, when persons in prior classes are not **reasonably** available at the time of death, and in the absence of [actual notice of contrary indications] **known objections** by the decedent or [actual notice of opposition] by a member of [the same or] a prior class, may give all or any part of the decedent's body, **with the exception of a vascularized composite allograft**, for any purpose specified in section 8612:

- [(1) The spouse.
- (2) An adult son or daughter.
- (3) Either parent.
- (4) An adult brother or sister.
- (5) A guardian of the person of the decedent at the time of his death.
- (6) Any other person authorized or under obligation to dispose of the body.]

(1) **An agent of the decedent at the time of death if the agent is expressly authorized to make the gift.**

(2) **The spouse of the decedent, unless an action for divorce is pending.**

(3) **An adult child of the decedent.**

(4) **A parent of the decedent.**

(5) **An adult sibling of the decedent.**

(6) **An adult grandchild of the decedent.**

(7) **A grandparent of the decedent.**

(8) **Any other person related to the decedent by blood, marriage or adoption.**

(9) A guardian of the person of the decedent.

(10) A person authorized or obligated to dispose of the decedent's body.

(b.1) Anatomical gifts prohibited in certain circumstances.--An anatomical gift may not be made by a person set forth in subsection (b) if, before an incision has been made to remove a part from the decedent's body or before invasive procedures have begun to prepare an intended recipient, any of the following apply:

(1) The district attorney or a law enforcement officer notifies the organ procurement organization that the person is a suspect or a person of interest in causing the disease, illness, injury or condition of the decedent.

(2) The person is the subject of a protection from abuse order, an order issued under 42 Pa.C.S. Ch. 62A (relating to protection of victims of sexual violence or intimidation), or a similar order from a court that was issued to the decedent.

(3) The district attorney or a law enforcement officer notifies the organ procurement organization that the person has been arrested or detained in connection with the condition of the decedent.

(b.2) Documentation required.--The organ procurement organization shall document the procedure taken to contact any of the persons in subsection (b). Such documentation shall be maintained by the organ procurement organization for a minimum of six years.

(b.3) No obligation to make gift.--The following apply:

(1) A person described in subsection (b) (2), (3), (4), (5), (6), (7), (8), (9) or (10) does not have a legal obligation to consent to making a gift of the decedent's body or part of the body.

(2) Before making a gift of the decedent's body or part of the body, a person described in subsection (b) (2), (3), (4), (5), (6), (7), (8), (9) or (10) is encouraged to consider the decedent's moral and religious beliefs regarding anatomical donation, if those beliefs are known to the person.

(c) Donee not to accept in certain cases.--[If the]

(1) The donee may not accept a gift under any of the following circumstances:

(i) The donee [has actual notice of contrary indications] **knows of an objection** by the decedent [or].

(ii) The donee **knows** that a gift by a member of a class is opposed by a **reasonably available** member of [the same or] a prior class[, the donee shall not accept the gift].

(iii) The donee **knows** that a gift by a member of a class is opposed by at least 50% of the **reasonably available members of the same class**.

(2) The persons authorized by subsection (b) may make the gift after or immediately before death.

* * *

Section 5. Section 8612 of Title 20 is amended to read:
§ 8612. Persons who may become donees; purposes for which anatomical gifts may be made.

[The following persons may become donees of gifts of bodies or parts thereof for any of the purposes stated:

(1) Any hospital, surgeon or physician for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy.

(3) Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.

(4) Any specified individual for therapy or transplantation needed by him.

(5) The board.]

(a) Donees.--An anatomical gift may be made to any of the following persons named in the document of gift:

(1) If for research or education, any of the following:

(i) A hospital.

(ii) An accredited medical school, dental school, college or university.

(iii) The board.

(iv) An organ procurement organization.

(v) Any other appropriate person as permitted by law.

(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 a tissue bank.

(4) An organ procurement organization.

(b) Directed donation.--If an anatomical gift to an individual under subsection (a) (2) cannot be transplanted into the individual, the part shall pass in accordance with subsection (c) if authorized by the person making the anatomical gift.

(c) Organ for transplant or therapy.--An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a) (2), shall pass to the organ procurement organization.

(d) Default.--If the intended purpose or recipient of an anatomical gift is not known, the following shall apply:

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

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

(3) If the part is an organ, the gift shall pass to the appropriate organ procurement organization.

(4) If the gift is of the decedent's entire body, the gift shall pass to the board.

(e) Multiple purposes.--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 shall be used for transplantation or therapy, if suitable and enumerated in the document of gift, and shall pass to the appropriate organ procurement organization. If the gift cannot be used for transplantation or therapy, the gift may be used for other lawful purposes enumerated in the document of gift.

(f) Unspecified purpose.--If an anatomical gift 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 shall pass in accordance with subsection (d).

Section 6. Section 8613(d) and (e) of Title 20 are amended and the section is amended by adding subsections to read:
§ 8613. Manner of executing anatomical gifts.

* * *

(b.1) Other means.--An anatomical gift may be made by a statement or symbol indicating that the donor has made an

anatomical gift, which shall be recorded in a donor registry or on the donor's driver's license or identification card. If an anatomical gift is indicated on a driver's license or an identification card, the anatomical gift is not invalidated by revocation, suspension, expiration or cancellation of:

- (1) the driver's license under 75 Pa.C.S. Ch. 15 (relating to licensing of drivers); or**
- (2) the identification card by the Department of Transportation.**

*** * ***

[(d) Designation of person to carry out procedures.--Notwithstanding section 8616(b) (relating to rights and duties at death), the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose, or, in the case of a gift of eyes, he may employ or authorize a person who is a funeral director licensed by the State Board of Funeral Directors, an eye bank technician or medical student, if the person has successfully completed a course in eye enucleation approved by the State Board of Medical Education and Licensure, or an eye bank technician or medical student trained under a program in the sterile technique for eye enucleation approved by the State Board of Medical Education and Licensure to enucleate eyes for an eye bank for the gift after certification of death by a physician. A qualified funeral director, eye bank technician or medical student acting in accordance with the terms of this subsection shall not have any liability, civil or criminal, for the eye enucleation.]

(d.1) Reliance.--Subject to the provisions of section 8616(c) (relating to rights and duties at death), a person may rely on a document of gift or amendment to a document of gift as being valid unless that person knows that the document of gift was not validly executed or was revoked.

(e) Consent not necessary.--[If a donor card, donor driver's license, living will, durable power of attorney or other document of gift evidencing a gift of organs or tissue has been executed,]

(1) Subject to paragraph (2), a donor's gift of all or any part of the donor's body, including a designation in a registry on a driver's license or identification card, donor card, advance health care directive, will or other document of gift, may not be revoked by the next of kin or other persons identified in section 8611(b). The consent of any person [designated in section 8611(b)] at the time of the donor's death or immediately thereafter is not necessary to render the gift valid and effective. This paragraph shall not be construed to permit the donation of a vascularized composite allograft.

(2) An agent, only if expressly authorized in writing in a power of attorney, advance health care directive, health care power of attorney or other document to override the decedent's instructions on the making of an anatomical gift, may revoke the decedent's gift. This paragraph shall not be construed to permit the donation of a vascularized composite allograft.

*** * ***

(g) Validity.--A document of gift is valid if executed in accordance with:

- (1) this subchapter;
- (2) the law of the state or country where it was executed; or
- (3) the law of the state or country where, at the time of execution of the document of gift, the person making the anatomical gift:
 - (i) is domiciled;
 - (ii) has a place of residence; or
 - (iii) is a citizen.

(h) Choice of law.--If a document of gift is valid under this section, the law of this Commonwealth governs interpretation of the document.

(i) Rights and protections for certain individuals.--

(1) An individual who is in need of an anatomical gift shall not be deemed ineligible to receive an anatomical gift solely because of the individual's physical or mental disability, except to the extent that the physical or mental disability has been found by a physician or surgeon following an individualized evaluation of the individual to be medically significant to the provision of the anatomical gift. If an individual has the necessary support system to assist the individual in complying with posttransplant medical requirements, an individual's inability to independently comply with those requirements shall not be deemed to be medically significant.

(2) As used in this subsection, "disability" shall have the same meaning as in the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327).

Section 7. Sections 8616(b), (c) and (d), 8617, 8619, 8621, 8622, 8623 and 8624 of Title 20 are amended to read:
§ 8616. Rights and duties at death.

* * *

(b) Physicians.--The time of death shall be determined by a physician who tends the donor at his death or, if none, the physician who certifies the death. [The physician or person who certifies death or any of his professional partners or associates shall not participate in the procedures for removing or transplanting a part.]

(c) Certain liability limited.--[A] **The following shall apply:**

(1) **Subject to paragraph (2), a person who acts in good faith in accordance with the terms of this subchapter or with the anatomical gift laws of another state or a foreign country [is not] shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for [his] the person's act.**

(2) **The immunity from civil liability provided under paragraph (1) shall not extend to acts or omissions resulting from gross negligence, recklessness or intentional misconduct of the person.**

(3) **Neither a person making an anatomical gift nor a donor's estate shall be liable for injury or damage that results from the making or use of the anatomical gift. In determining whether an anatomical gift has been made, amended or revoked under this subchapter, a person may rely upon representations of an individual listed in section 8611(b) regarding the individual's relationship to the donor or decedent unless the person knows that the representation is untrue.**

(d) **Law on autopsies applicable.--[The] Subject to the provisions of section 8626 (relating to facilitation of anatomical gift from decedent whose death is under**

investigation), the provisions of this subchapter are subject to the laws of this Commonwealth prescribing powers and duties with respect to autopsies. Notwithstanding 18 Pa.C.S. Ch. 91 (relating to criminal history record information), an organ procurement organization is authorized to obtain a copy of an autopsy report in a timely fashion upon request and payment of reasonable copying fees.

§ 8617. Requests for anatomical gifts.

(a) Procedure.--On or before the occurrence of each death in an acute care general hospital, the hospital shall make contact with the regional organ procurement organization in order to determine the suitability for organ, tissue and eye donation for any purpose specified under this subchapter. This contact and the disposition shall be noted on the patient's medical record.

(b) Limitation.--If the hospital administrator or his designee has received actual notice of opposition from any of the persons named in section 8611(b) (relating to persons who may execute anatomical gift) and the decedent was not in possession of a validly executed donor card, the gift of all or any part of the decedent's body shall not be requested.

(c) Donor card.--Notwithstanding any provision of law to the contrary, the intent of a decedent to participate in an organ donor program as evidenced by the possession of a validly executed donor card, donor driver's license, living will, durable power of attorney or other document of gift shall not be revoked by any member of any of the classes specified in section 8611(b).

(d) Identification of potential donors.--Each acute care general hospital shall develop within one year of the date of final enactment of this section, with the concurrence of the hospital medical staff, a protocol for identifying potential organ and tissue donors. It shall require that, at or near the time of every individual death, all acute care general hospitals contact by telephone their regional organ procurement organization to determine suitability for organ, tissue and eye donation of the individual in question. The person designated by the acute care general hospital to contact the organ procurement organization shall have the following information available prior to making the contact:

- (1) The patient's identifier number.
- (2) The patient's age.
- (3) The cause of death.
- (4) Any past medical history available.

The organ procurement organization, in consultation with the patient's attending physician or his designee, shall determine the suitability for donation. If the organ procurement organization in consultation with the patient's attending physician or his designee determines that donation is not appropriate based on established medical criteria, this shall be noted by hospital personnel on the patient's record, and no further action is necessary. If the organ procurement organization in consultation with the patient's attending physician or his designee determines that the patient is a suitable candidate for anatomical donation, the acute care general hospital shall initiate a request by informing the persons and following the procedure designated under section 8611(b) of the option to donate organs, tissues or eyes. The person initiating the request shall be an organ procurement organization representative or a designated requestor. The organ procurement organization representative or designated requestor shall ask persons pursuant to section 8611(b) whether the

deceased was an organ donor. If the person designated under section 8611(b) does not know, then this person shall be informed of the option to donate organs and tissues. The protocol shall encourage discretion and sensitivity to family circumstances in all discussions regarding donations of tissue or organs. The protocol shall take into account the deceased individual's religious beliefs or nonsuitability for organ and tissue donation.

(e) Tissue procurement.--

(1) The first priority use for all tissue shall be transplantation.

(2) Upon Department of Health approval of guidelines pursuant to subsection (f)(1)(ii), all acute care general hospitals shall select at least one tissue procurement provider. A hospital shall notify the regional organ procurement organization of its choice of tissue procurement providers. If a hospital chooses more than one tissue procurement provider, it may specify a rotation of referrals by the organ procurement organization to the designated tissue procurement providers.

(3) Until the Department of Health has approved guidelines pursuant to subsection (f)(1)(ii), tissue referrals at each hospital shall be rotated in a proportion equal to the average rate of donors recovered among the tissue procurement providers at that hospital during the two-year period ending August 31, 1994.

(4) The regional organ procurement organization, with the assistance of tissue procurement providers, shall submit an annual report to the General Assembly on the following:

(i) The number of tissue donors.

(ii) The number of tissue procurements for transplantation.

(iii) The number of tissue procurements recovered for research by each tissue procurement provider operating in this Commonwealth.]

(a) Procedure.--A hospital located in this Commonwealth shall notify the applicable designated organ procurement organization or a third party designated by the organ procurement organization of an individual whose death is imminent or who has died in the hospital. Notification shall be made in a timely manner to ensure that examination, evaluation and ascertainment of donor status as specified in subsection (d) may be completed within a time frame compatible with the donation of organs and tissues for transplant. The notification shall be made without regard to whether the person has executed an advance health care directive.

(b) Referrals.--If an organ procurement organization receives a referral of an individual whose death is imminent or who has died in a hospital, the organ procurement organization shall make a reasonable search of the records of the Donate Life PA Registry or the applicable State donor registry that the organ procurement organization knows exists for the geographic area in which the individual resided or resides in order to ascertain whether the individual has made an anatomical gift.

(c) Document of gift.--

(1) If the individual whose death is imminent or has died in the hospital has a document of gift which authorizes an anatomical donation, including registration with the Donate Life PA Registry, the organ procurement organization representative or the designated requestor shall attempt to

notify a person listed in section 8611(b) (relating to persons who may execute anatomical gift) of the gift.

(2) If no document of gift is known to the organ procurement organization representative or the designated requestor, then the organ procurement organization representative or the designated requestor shall ask the persons listed in section 8611(b) whether the individual had a validly executed document of gift. If there is no evidence of an anatomical gift by the individual, the organ procurement organization representative or the designated requestor shall notify a person listed in section 8611(b) of the option to donate organs and tissues. The notification shall be performed in accordance with a protocol that encourages discretion and sensitivity to family circumstances in all discussions regarding donations of organs and tissues. The protocol shall take into account the individual's religious beliefs or nonsuitability for organ and tissue donation.

(3) The hospital administrator or the hospital administrator's designated representative shall indicate in the medical record of the individual the information under this paragraph. The information shall also be communicated by the hospital administrator or the hospital administrator's designee to the organ procurement organization or designated requestor, as appropriate:

(i) whether or not a document of gift is known to exist and whether a gift was made;

(ii) if a gift was made, the name of the person granting the gift and that person's relationship to the individual; and

(iii) all of the following:

(A) Whether the individual executed an advance health care directive, living will, power of attorney, health care power of attorney, will or other document, including a do-not-resuscitate (DNR) order, evidencing an intention to limit, withdraw or withhold life-sustaining measures.

(B) Whether the individual indicated in an advance health care directive, living will, power of attorney, health care power of attorney, will or other document an intention to limit the anatomical gifts of the individual in any way, including the intention to limit an anatomical gift to parts of the body which do not require a ventilator or other life-sustaining measures, or to deny making or refusing to make an anatomical gift.

(C) Whether the individual amended or revoked an anatomical gift in any document specified in this subparagraph or in any other document or in accordance with section 8615 (relating to amendment or revocation of gift).

(d) Testing.--

(1) This subsection shall apply if:

(i) a hospital refers an individual whose death is imminent or who has died in a hospital to an organ procurement organization;

(ii) the organ procurement organization, in consultation with the individual's attending physician or a designee, determines, based upon a medical record review and other information supplied by the individual's attending physician or a designee, that the individual may be a prospective donor; and

(iii) the individual has not:

(A) indicated in an advance health care directive, a living will, power of attorney, health care power of attorney, will, DNR order or other document an intention to either limit the anatomical gifts of the individual to parts of the body which do not require a ventilator or other life-sustaining measures or indicated an intention to deny making or refusing to make an anatomical gift; or

(B) amended or revoked an anatomical gift in any document specified in subsection (c)(3) or in any other document or in accordance with section 8615.

(2) If the requirements of paragraph (1) are met, the following shall apply:

(i) Subject to the wishes expressed by the individual under subsection (c)(3), the organ procurement organization may conduct a blood or tissue test or minimally invasive examination which is reasonably necessary to evaluate the medical suitability of a part that is or may be the subject of an anatomical gift. Testing and examination under this subparagraph shall comply with a denial or refusal to make an anatomical gift or any limitation expressed by the individual with respect to the part of the body to donate or a limitation in the provision of a ventilator or other life-sustaining measures, as specified in subsection (c)(3) or a revocation or amendment to an anatomical gift as specified in a document in subsection (c)(3) or in any other document or in accordance with section 8615. The results of tests and examinations under this subparagraph shall be used or disclosed only:

(A) to evaluate medical suitability for donation and to facilitate the donation process; and

(B) as required or permitted by law.

(ii) Subject to the wishes expressed by the individual under subsection (c)(3), the hospital may not withdraw any measures which are necessary to maintain the medical suitability of the part until the organ procurement organization or designated requestor, as appropriate, has had the opportunity to advise the applicable persons as set forth in section 8611(b) of the option to make an anatomical gift and has received or been denied authorization to proceed with recovery of the part.

(e) Testing after death.--Subject to the individual's wishes under subsection (c)(3), after an individual's death, a person to whom an anatomical gift may pass under section 8612 (relating to persons who may become donees; purposes for which anatomical gifts may be made) may conduct a test or examination which is reasonably necessary to evaluate the medical suitability of the body or part for its intended purpose.

(f) Guidelines.--

(1) The Department of Health, in consultation with organ procurement organizations, tissue procurement providers and the Hospital Association of Pennsylvania, donor recipients and family appointed pursuant to section 8622(c)(3) (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund) shall, within six months of the effective date of this [chapter] **subchapter**, do all of the following:

(i) Establish guidelines regarding efficient procedures facilitating the delivery of anatomical gift donations from receiving hospitals to **organ procurement organizations and tissue** providers.

(ii) Develop guidelines to assist hospitals in the selection and designation of tissue procurement providers.

(2) Each organ procurement organization and each tissue procurement provider operating within this Commonwealth shall, within six months of the effective date of this chapter, file with the Department of Health, for public review, its operating protocols.

(f.1) Scope.--The determination under this section may include copying of records necessary to determine the medical suitability of the body or part. This subsection includes medical, dental and other health-related records.

(f.2) Recipients.--

(1) Subject to the provisions of this subchapter, the rights of the person to whom a part passes under section 8612 shall be 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.

(2) Subject to the wishes of the individual under subsection (c) (3) and this subchapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation and the use of remains in a funeral service. If the gift is of a part, the person to whom the part passes under section 8612, upon the death of the individual and before embalming, burial or cremation, shall cause the part to be removed without unnecessary mutilation.

(f.3) Physicians.--

(1) Neither the physician who attends the individual at death nor the physician who determines the time of the individual's death may participate in the procedures for removing or transplanting a part from the individual.

(2) Subject to the individual's wishes under subsection (c) (3), and subject to paragraph (1), a physician or technician may remove a donated part from the body of an individual that the physician or technician is qualified to remove.

(f.4) Coordination of procurement and use.--

(1) A hospital shall enter into agreements or affiliations with organ procurement organizations for coordination of procurement and use of anatomical gifts.

(2) The organ procurement organization, hospital personnel and other individuals involved in the anatomical donation process shall limit the testing and examination of the individual under this section so as to comply with the wishes of the individual under subsection (c) (3).

(g) Death record review.--

(1) The Department of Health shall make annual death record reviews at acute care general hospitals to determine their compliance with subsection [(d)] **(a)**.

(2) To conduct a review of an acute care general hospital, the following apply:

(i) The [Department of Health] **department** shall select to carry out the review the Commonwealth-licensed organ procurement organization designated by the [Health Care Financing Administration] **Centers for Medicare and Medicaid Services** for the region within which the acute care general hospital is located. For an organ procurement organization to be selected under this

subparagraph, the organization must not operate nor have an ownership interest in an entity which provides all of the functions of a tissue procurement provider.

(ii) If there is no valid selection under subparagraph (i) or if the organization selected under subparagraph (i) is unwilling to carry out the review, the department shall select to carry out the review any other Commonwealth-licensed organ procurement organization. For an organ procurement organization to be selected under this subparagraph, the organization must not operate nor have an ownership interest in an entity which provides all of the functions of a tissue procurement provider.

(iii) If there is no valid selection under subparagraph (ii) or if the organization selected under subparagraph (ii) is unwilling to carry out the review, the department shall carry out the review using trained department personnel.

(3) There shall be no cost assessed against a hospital for a review under this subsection.

(4) If the department finds, on the basis of a review under this subsection, that a hospital is not in compliance with subsection [(d)] **(a)**, the department may impose an administrative fine of up to \$500 for each instance of noncompliance. A fine under this paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action). Fines collected under this paragraph shall be deposited into the fund.

(5) An organ procurement organization may, upon request and payment of associated fees, obtain certified copies of death records of a donor from the Division of Vital Records of the department.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Designated requestor." A hospital employee completing a course offered by [an] **a designated** organ procurement organization on how to approach potential donor families and request organ or tissue donation.

"Noncompliance." Any failure on the part of a hospital to contact an organ procurement organization as required under subsection [(d)] **(a)**.

§ 8619. Use of driver's license or identification card to indicate organ or tissue donation.

(a) General rule.--The Department of Transportation shall redesign the driver's license and identification card application system to process requests for information regarding consent of the individual to organ or tissue donation. The following question shall be asked on both the application for a driver's license or identification card and on the organ donor designation at a photo center:

Pennsylvania strongly supports organ and tissue donation because of its life-saving and life-enhancing opportunities.

Do you wish to have the organ donor designation printed on your driver's license?

Only an affirmative response of an individual shall be noted on the front of the driver's license or identification card and shall clearly indicate the individual's intent to donate his organs or tissue. [A notation on an individual's driver's

license or identification card that he intends to donate his organs or tissue is deemed sufficient to satisfy all requirements for consent to organ or tissue donation.] **Nothing in this section shall be construed to authorize a donation of a hand, facial tissue, limb or other vascularized composite allograft. The Department of Transportation shall record and store all donor designations in the Donate Life PA Registry. Subject to an individual's wishes as expressed in a document listed under sections 8613(e)(2) (relating to manner of executing anatomical gifts) and to the individual's wishes under section 8617(c)(3) (relating to requests for anatomical gifts), the recorded and stored designation is sufficient to satisfy all requirements for consent to organ and tissue donation. The recorded and stored designation is not a public record subject to disclosure as defined in section 102 of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.**

(a.1) Informational insert.--The following apply:

(1) Within 180 days of the effective date of this subsection, the Department of Transportation shall furnish an informational insert about organ donation, tissue donation and donation of vascularized composite allografts to each holder of a driver's license or identification card when the department mails a camera card to the holder at the time of renewal.

(2) The informational insert shall explain:

(i) that under Pennsylvania law, donation of organs, tissues and vascularized composite allografts is a voluntary act;

(ii) the difference between organs, tissues and vascularized composite allografts;

(iii) that under Pennsylvania law, explicit and specific consent is needed to donate a vascularized composite allograft;

(iv) that under Pennsylvania law, the request for a vascularized composite allograft must be made separately from a request for organs and tissues;

(v) that the organ donor designation on the driver's license authorizes the individual to donate organs and tissue and does not authorize the individual to donate a vascularized composite allograft;

(vi) that more information about organ donation, tissue donation and donation of vascularized composite allografts, including information about the procedure for recovering organs and other parts of the body and information about being declared dead through brain death and dead by lack of cardiac function, can be found on the Department of Transportation's publicly accessible Internet website; and

(vii) that, before deciding whether to have an organ donor designation placed on the driver's license, the individual may consult with the individual's physician, attorney or clergy.

(3) The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund shall reimburse the Department of Transportation for the costs incurred in the development and implementation of the informational insert program.

(b) Electronic access.--The organ procurement organizations designated by the Federal Government in the Commonwealth of Pennsylvania as part of the nationwide organ procurement network

[may] **shall** be given 24-hour-a-day electronic access to information necessary to confirm an individual's organ donor status through the Department of Transportation's driver licensing database. Necessary information shall include the individual's name, address, date of birth, driver's license number and organ donor status. Notwithstanding 75 Pa.C.S. § 6114 (relating to limitation on sale, publication and disclosure of records), the Department of Transportation is authorized to provide the organ procurement organizations, after a written agreement between the Department of Transportation and the organ procurement organizations is first obtained, with the foregoing information. The organ procurement organization shall not use such information for any purpose other than to confirm an individual's organ donor status at or near or after an individual's death. The organ procurement organizations shall not be assessed the fee for such information prescribed by 75 Pa.C.S. § 1955(a) (relating to information concerning drivers and vehicles).

§ 8621. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions.

(a) Driver's license.--

(1) Beginning as soon as practicable, but no later than [January 1, 1995] **10 months after the effective date of this paragraph**, the Department of Transportation shall provide an applicant for an original or renewal driver's license or identification card the opportunity to make a contribution of [\$1] **\$3** to the fund. The contribution shall be added to the regular fee for an original or renewal driver's license or identification card. One contribution may be made for each issuance or renewal of a license or identification card. Contributions shall be used exclusively for the purposes set out in section 8622 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund).

(2) The Department of Transportation shall monthly determine the total amount designated under this section and shall report that amount to the State Treasurer, who shall transfer that amount to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

(3) **The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund shall reimburse the Department of Transportation for the costs incurred in the initial development and implementation of the contribution program, as well as any additional costs that may arise from changes that are agreed to by both the Department of Transportation and the advisory committee.**

(b) Vehicle registration.--[The]

(1) Beginning as soon as practicable, but no later than **10 months after the effective date of this paragraph**, the Department of Transportation shall provide an applicant for a renewal vehicle registration the opportunity to make a contribution of [\$1] **\$3** to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund. The contribution shall be added to the regular fee for a renewal of a vehicle registration. One contribution may be made for each renewal vehicle registration. Contributions shall be used exclusively for the purposes described in section 8622.

(2) The Department of Transportation shall monthly determine the total amount designated under this section and shall report that amount to the State Treasurer, who shall transfer that amount to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

(3) The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund shall reimburse the [department for the initial costs incurred in the development and implementation of the contribution program under this subsection.] **Department of Transportation for the costs incurred in the initial development and implementation of the contribution program, as well as any additional costs that may arise from changes that are agreed to by both the Department of Transportation and the advisory committee.**

(4) The General Fund shall reimburse the Department of Transportation for the actual annual operating costs of the program for vehicle registrations as described in this subsection [subject to the following limits: For the first fiscal year during which this subsection is effective, the General Fund shall reimburse the Department of Transportation for the actual operating costs of the program in this subsection up to a maximum of \$100,000. For each fiscal year thereafter, the General Fund shall reimburse the Department of Transportation for the actual operating costs of the program in this subsection in an amount not to exceed the prior year's actual operating costs on a full fiscal year basis plus 3%. The amounts approved by the Governor as necessary are hereby appropriated from the General Fund for this purpose].

(c) **Internet website.--The following shall become effective within 365 days of the effective date of this subsection:**

(1) **The Department of Transportation's publicly accessible Internet website shall provide hyperlinks through which persons may electronically make voluntary contributions of at least \$1 to the fund. At a minimum, the hyperlinks shall be provided in accordance with subsections (a)(1) and (b)(1).**

(2) **The Department of Transportation shall provide detailed information on the Department of Transportation's publicly accessible Internet website, written in nonlegal terms, in both English and Spanish, about anatomical donation, organ donation and vascularized composite allografts. The website shall include the following:**

(i) **The laws of this Commonwealth, including a statement that donating a part of the body is voluntary.**

(ii) **The risks and benefits of organ donation, tissue donation and donation of eyes.**

(iii) **The risks and benefits of donating a hand, facial tissue or limb or other vascularized composite allografts. The information about risks and benefits shall include information that the appearance of the donor will be significantly altered after recovery and that the surgical recovery team may perform reconstructive surgery to prepare for burial. In addition, the information shall include a statement that a vascularized composite allograft may impact burial arrangements and that an open casket may not be possible. The information shall also include and clearly explain:**

(A) **The difference between hand, facial tissue and limb donation and organ donation.**

(B) **The procedure for recovery of a hand, facial tissue or limb or other vascularized composite allograft.**

(C) **That Pennsylvania law requires explicit and specific and separate consent to donate hands, facial tissue or limbs or other vascularized composite**

allografts from the donor and, when applicable, the donor's family.

(D) The procedure needed to obtain consent from family members for a donation of organs, tissues and eyes and the procedure needed to obtain consent from families for hands, facial tissue, limbs or other vascularized composite allografts.

(E) That donation of hands, facial tissue or limbs or other vascularized composite allografts is voluntary.

(F) That documents such as living wills, advance health care directives, health care powers of attorney and powers of attorney may be used to permit or deny making a donation of hands, facial tissue or limbs or other vascularized composite allografts, depending upon the individual's wishes.

(G) The procedure used by hospitals and organ procurement organizations to effectuate a donation of hands, facial tissue or limbs or other vascularized composite allografts.

(H) That if the individual intends to withhold or withdraw life-sustaining measures through an advance health care directive, living will, health care power of attorney, power of attorney or other document, that the choices of the individual for end-of-life care may be incompatible with donation of what we traditionally think of as organs (heart, lung, liver, kidney) and hands, facial tissue or limbs or other vascularized composite allografts.

(I) That the individual may wish to consult with a physician, attorney or clergy before making the decision to make a donation of what we traditionally think of as organs (heart, lung, liver, kidney) or a donation of hands, facial tissue or limbs or other vascularized composite allografts.

(iv) The laws of this Commonwealth regarding living wills, health care powers of attorney, advance health care directives, do-not-resuscitate orders and other documents which can be used to provide, limit or deny making or revoking an anatomical donation or a donation of hands, facial tissue or limbs or other vascularized composite allografts.

(v) A description regarding:

(A) the procedure used by hospitals and organ procurement organizations to ask family members if the individual will make an anatomical donation;

(B) if the individual may be or is an organ, tissue or eye donor, the types of tests that will be performed on the individual by a hospital, organ procurement organization, tissue procurement organization, eye bank or tissue bank and the procedure used to recover organs, tissues and eyes, including any differences in the procedure used to recover organs; and

(C) brain death and cardiac death.

(3) The Department of Transportation shall provide the material listed in paragraph (2) in written form, in English and in Spanish, at all driver's license centers across this Commonwealth. Additionally, the Department of Transportation shall provide such materials upon request, including the request of another agency of the Commonwealth.

(4) The Department of Health shall provide conspicuous notice on the Department of Health's publicly accessible Internet website that detailed information about anatomical donation and donation of a hand, facial tissue, limb or other vascularized composite allograft may be found on the Department of Transportation's publicly accessible Internet website. The Department of Health shall also provide a conspicuous hyperlink to the information set forth in paragraph (2).

§ 8622. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

(a) Establishment.--All contributions received by the Department of Transportation under section 8621 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions) [and the Department of Revenue under section 8618 (relating to voluntary contribution system)] and the Department of Health under section 8617 (relating to requests for anatomical gifts) shall be deposited into a special fund in the State Treasury to be known as The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund, which is hereby established.

(b) Appropriation.--All moneys deposited in the fund and interest which accrues from those funds are appropriated on a continuing basis subject to the approval of the Governor to compensate the Department of Transportation, the Department of Health and the Department of Revenue for actual costs related to implementation of this chapter, including all costs of the [Organ Donation Advisory Committee] **advisory committee** created in subsection [(c)] **(c.1)**. Any remaining funds are appropriated subject to the approval of the Governor for the following purposes:

(1) [10%] **Ten percent** of the total fund may be expended annually by the Department of Health for reasonable hospital and other medical expenses, funeral expenses and incidental expenses incurred by the donor or donor's family in connection with making [a vital organ donation] **an organ or tissue donation, along with programming, to provide support services to organ donors and tissue donors and their families, such as bereavement counseling services**. Such expenditures shall not exceed \$3,000 per donor and shall only be made directly to the funeral home, hospital or other service provider related to the donation. No part of the fund shall be transferred directly to the donor's family, next of kin or estate. The advisory committee shall develop procedures, including the development of a pilot program, necessary for effectuating the purposes of this paragraph.

(2) [50%] **Fifty percent** may be expended for grants to certified organ procurement organizations for the development and implementation of organ donation awareness programs in this Commonwealth. The Department of Health shall develop and administer this grant program, which is hereby established.

(3) [15%] **Fifteen percent** may be expended by the Department of Health, in cooperation with certified organ procurement organizations, for the [Project-Make-A-Choice] **Project Make-A-Choice** program, which shall include information pamphlets designed by the Department of Health relating to organ donor awareness and the laws regarding organ donation, public information and public education about contributing to the fund when obtaining or renewing a driver's license **or identification card** and when completing a State individual income tax return form. **The Department**

of Health shall develop an informational insert for use when receiving a driver's license or identification card based on the Department of Transportation's specifications in accordance with the requirements of section 8619(a.1) (relating to use of driver's license or identification card to indicate organ or tissue donation). Project Make-A-Choice shall also provide the Internet website address and a hyperlink for the Department of Transportation's Internet website under section 8621(c)(2), and a statement that detailed information about anatomical donation and donation of a hand, facial tissue, limb or other vascularized composite allograft, can be found on the Department of Transportation's publicly accessible Internet website. The Department of Health shall also design information pamphlets about donation of hands, facial tissue and limbs and other vascularized composite allografts. Project Make-a-Choice shall also provide information about donation of hands, facial tissue or limbs or other vascularized composite allografts, which shall include the topics set forth in section 8621(c)(2).

(4) [25%] **Twenty-five percent** may be expended by the Department of Education for the implementation of organ donation awareness programs in the secondary schools in this Commonwealth.

[(c) Advisory committee.--The Organ Donation Advisory Committee is hereby established, with membership as follows:

- (1) Two representatives of organ procurement organizations.
- (2) Two representatives of tissue procurement providers.
- (3) Six members representative of organ, tissue and eye recipients, families of recipients and families of donors.
- (4) Three representatives of acute care hospitals.
- (5) One representative of the Department of Health.
- (6) One representative of eye banks.

All members shall be appointed by the Governor. Appointments shall be made in a manner that provides representation of the northwest, north central, northeast, southwest, south central and southeast regions of this Commonwealth. Members shall serve five-year terms. The Governor may reappoint advisory committee members for successive terms. Members of the advisory committee shall remain in office until a successor is appointed and qualified. If vacancies occur prior to completion of a term, the Governor shall appoint another member in accordance with this subsection to fill the unexpired term. The advisory committee shall meet at least biannually to review progress in the area of organ and tissue donation in this Commonwealth, recommend education and awareness training programs, recommend priorities in expenditures from the fund and advise the Secretary of Health on matters relating to administration of the fund. The advisory committee shall recommend legislation as it deems necessary to fulfill the purposes of this chapter. The advisory committee shall submit a report concerning its activities and progress to the General Assembly within 30 days prior to the expiration of each legislative session. The Department of Health shall reimburse members of the advisory committee for all necessary and reasonable travel and other expenses incurred in the performance of their duties under this section.]

(c.1) Advisory committee.--

(1) The Organ and Tissue Donation Advisory Committee is established. Each member shall be appointed by the Governor. Membership shall be as follows:

- (i) The Secretary of Education or a designee.
- (ii) The Secretary of Health or a designee.
- (iii) The Secretary of Transportation or a designee.
- (iv) The Secretary of the Commonwealth or a designee.
- (v) One representative from each designated organ procurement organization.
- (vi) Two representatives of tissue procurement providers.
- (vii) Six members representative of:
 - (A) organ, tissue and eye recipients;
 - (B) families of recipients;
 - (C) donors; and
 - (D) families of donors.
- (viii) Two representatives of acute care hospitals which are:
 - (A) licensed in this Commonwealth; and
 - (B) members of the Statewide association representing the interests of hospitals throughout this Commonwealth.
- (ix) One representative of eye banks.
- (x) One representative of community health organizations.
- (xi) One elected county coroner of this Commonwealth.

(2) A member under paragraph (1)(i), (ii), (iii) and (iv) shall serve ex officio.

(3) For a member under paragraph (1)(v), (vi), (vii), (viii), (ix), (x) and (xi), the following apply:

- (i) Members shall be appointed in a manner which reflects geographic diversity. Input on the selection of the representatives under paragraph (1)(viii) shall be sought from the Statewide association referred to in paragraph (1)(viii)(B).
- (ii) The members shall serve five-year terms.
- (iii) The Governor may reappoint an advisory committee member for successive terms.
- (iv) A member shall remain in office until a successor is appointed and qualified.
- (v) If a vacancy occurs prior to completion of a term, the Governor shall appoint a member to fill the unexpired term in the same manner as the vacating member was appointed.

(4) The advisory committee shall meet at least biannually to do all of the following:

- (i) Review progress in the area of organ and tissue donation in this Commonwealth.
- (ii) Recommend education and awareness training programs.
- (iii) Recommend priorities in expenditures from the fund.
- (iv) Advise the Secretary of Health on matters relating to administration of the fund.
- (v) Recommend legislation as necessary to fulfill the purposes of this subchapter.

(5) The advisory committee shall submit a report concerning the advisory committee's activities and progress to the Secretary of the Senate and the Chief Clerk of the House of Representatives by October 31 of each even-numbered

year. A final written report under this section shall be adopted at a public meeting. The report shall be a public record under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(6) The Department of Health shall reimburse members of the advisory committee only for necessary and reasonable travel and other expenses incurred in the performance of the advisory committee members' duties under this subsection.

(d) Reports.--The Department of Health, the Department of Transportation and the Department of Education shall submit an annual report to the General Assembly on expenditures of fund moneys and any progress made in [reducing the number of potential donors who were not identified] **increasing the number of donor designations.**

[(e) Definition.--As used in this section, the term "vital organ" means a heart, lung, liver, kidney, pancreas, small bowel, large bowel or stomach for the purpose of transplantation.]

(f) **Lead Commonwealth agency.**--The Department of Health shall be the lead Commonwealth agency responsible for promoting organ, tissue and eye donation in this Commonwealth and shall coordinate activities among other collaborating Commonwealth agencies.

§ 8623. Confidentiality requirement.

[The identity of the donor and of the recipient may not be communicated unless expressly authorized by the recipient and next of kin of the decedent.]

(a) **General rule.**--Except as provided in subsection (b), no organ procurement organization, eye bank or tissue bank may divulge any individually identifiable information acquired in the course of performing the organization's or banks' responsibilities under this chapter except for the purposes of facilitating organ, eye or tissue donation and transplantation or as otherwise required under applicable laws.

(b) **Donors and recipients.**--An organ procurement organization, eye bank or tissue bank may communicate individually identifiable information of the donor and recipient if expressly authorized by:

(1) the recipient; and

(2) if the donor is alive, the donor, or, if the donor is deceased, the next of kin of the donor.

§ 8624. Prohibited activities.

[(a) Affiliates.--No organ procurement organization selected by the Department of Health under section 8617(g) (relating to requests for anatomical gifts) to conduct annual death reviews may use that review authority or any powers or privileges granted thereby to coerce or attempt to coerce a hospital to select the organization or any tissue procurement provider contractually affiliated with the organization as a designated tissue procurement provider under section 8617(e).]

(b) **Unfair acts.**--No organ procurement organization or tissue procurement provider may disparage the services or business of other procurement providers by false or misleading representations of fact, engage in any other fraudulent conduct to influence the selection by a hospital of a qualified tissue procurement provider nor engage in unlawful competition or discrimination. This subsection is not intended to restrict or preclude any organ procurement organization or tissue procurement provider from marketing or promoting its services in the normal course of business.]

(c) **Organ procurement organizations, eye banks and tissue banks.**--

(1) An organ procurement organization, an eye bank or a tissue bank shall not do any of the following:

(i) Disparage the services or business of another organ procurement organization, eye bank or tissue bank by false or misleading representations of fact.

(ii) Engage in fraudulent conduct to influence the selection by a hospital of an eye bank or tissue bank.

(iii) Engage in unlawful competition or discrimination.

(2) This subsection is not intended to restrict or preclude an organ procurement organization from marketing or promoting the organ procurement organization's services in the normal course of business.

(d) Funeral establishments.--

(1) Except as set forth in paragraph (2), a funeral director or a funeral establishment shall not:

(i) remove body parts from a corpse;

(ii) permit others to remove body parts from a corpse; or

(iii) use funeral establishment facilities to remove body parts from a corpse.

(2) Paragraph (1) shall not apply as follows:

(i) Removal is permissible if it is:

(A) necessary to perform embalming or other services in preparation for burial or cremation; and

(B) authorized in writing by a family member, guardian or other person responsible for disposition of the body.

(ii) Notwithstanding any other provision of law, if a donation is authorized under this subchapter, a designated organ procurement organization and a Pennsylvania nonprofit eye bank accredited by the Eye Bank Association of America may recover donated ocular tissue, including the whole eye, cornea and sclera, and associated blood specimens at a funeral establishment.

(3) If a funeral director is notified by a person authorized to make donations under this subchapter that the person wishes to donate body parts from a corpse within the funeral director's custody, the funeral director shall immediately notify the organ procurement organization designated to serve that region.

Section 8. Title 20 is amended by adding sections to read:
§ 8625. Promotion of organ and tissue donation; Donate Life PA Registry established.

(a) Promotion.--The Department of Transportation shall ensure access by residents of this Commonwealth to an Internet-based interface which promotes anatomical donation and enables residents 18 years of age or older who hold a Pennsylvania driver's license or identification card to register as an organ or tissue donor and have that designation immediately integrated into the current database maintained by the department. This section shall not permit consent to donation of hands, facial tissue or limbs or other vascularized composite allografts. The Internet-based interface shall clearly state that the Internet-based interface only permits consent to anatomical donation. The Internet-based interface shall also state where on the Department of Transportation's publicly accessible Internet website detailed information about organ donation, tissue donation, donation of eyes and donation of hands, facial tissue or limbs or other vascularized composite allografts may be found and shall provide a hyperlink to that information.

(b) Paper form.--

(1) Within one year of the effective date of this section, the Department of Transportation shall establish a system which allows an individual who has been issued a driver's license or identification card to add the individual's anatomical donor designation to the Donate Life PA Registry by submitting a form to the department. This section shall not permit consent to donation of hands, facial tissue or limbs or other vascularized composite allografts. The Internet-based interface shall clearly state that the interface only permits consent to anatomical donation. The interface shall also state where on the Department of Transportation's publicly accessible Internet website detailed information about organ donation, tissue donation, eye donation and donation of hands, facial tissue or limbs or other vascularized composite allografts may be found and shall provide a hyperlink to that information.

(2) Registration shall be provided at no cost to the registrant.

(c) Donate Life PA Registry.--That portion of the database maintained by the Department of Transportation for recording donor designations and Internet-based interface established in this section shall be known as the Donate Life PA Registry.

(d) Form and content.--The form and content of the Internet-based interface shall be determined and maintained by the Department of Transportation, after consulting with the designated organ procurement organizations. The Internet-based interface shall not permit consent to donation of hands, facial tissue or limbs or other vascularized composite allografts.

(e) Technology.--An information technology system adopted by the Department of Transportation after the effective date of this section shall continue to accommodate the inclusion of donor designation information into the database and the ongoing operation of the Donate Life PA Registry.

§ 8626. Facilitation of anatomical gift from decedent whose death is under investigation.

(a) Applicability of section.--This section shall apply in all cases when the coroner or medical examiner must determine the cause of death and whether the death may have resulted from criminal acts or criminal neglect.

(b) Full denial of recovery of organs.--If a coroner or medical examiner is considering denying recovery of all of the organs of a decedent, the coroner or medical examiner shall comply with the procedure set forth in this subsection. The following apply:

(1) The coroner or medical examiner or a designee shall meet with a medical advisory group composed of the decedent's attending physician or a designee, the transplant surgeon or a designee and the applicable designated organ procurement organization at the hospital, during a reasonable time consistent with organ donation and preservation of forensic evidence. In addition, the forensic pathologist may participate as part of the medical advisory group by appearing in person at the hospital, by telephone or through electronic means.

(2) The medical advisory group shall provide the coroner or medical examiner or a designee with the clinical findings of testing and medical procedures performed on the decedent while at the hospital.

(3) If, after the review of the testing and medical procedures set forth in paragraph (2), the coroner or medical examiner or a designee intends to deny recovery of all of

the decedent's organs, the coroner or medical examiner or a designee must provide a written statement explaining the reason for the denial. The statement shall be provided to the designated organ procurement organization upon request. The coroner or medical examiner or a designee shall ensure that the written statement is made part of the coroner's or medical examiner's file. The written statement shall be exempt from the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(c) Forms.--The coroner or medical examiner shall develop a form for the purpose of stating that the coroner or medical examiner has denied the recovery of all organs as set forth in subsection (b). The coroner or medical examiner shall complete the form when denying recovery of all of a decedent's organs as set forth in subsection (b).

§ 8626.1. Notification by coroners and medical examiners to district attorneys.

(a) Applicability.--This section shall apply in all cases when the coroner or medical examiner:

(1) must determine the cause of death and whether the death may have resulted from criminal acts or criminal neglect; and

(2) is not the coroner or medical examiner of the county in which the cause precipitating the death of the individual is believed to have occurred.

(b) Procedure.--The coroner or medical examiner specified in subsection (a)(2) shall notify the coroner or medical examiner of the county in which the cause precipitating the death of the individual is believed to have occurred. After receiving the notification, the coroner or medical examiner shall notify or cause to be notified the district attorney of the county in which the cause precipitating the death of the individual is believed to have occurred.

§ 8626.2. Discretionary notification by coroner or medical examiner.

(a) Notification.--Except as set forth in subsection (b), a coroner or medical examiner or designee may notify the applicable designated organ procurement organization of a person's death outside the hospital for the purpose of facilitating recovery of tissues for transplant.

(b) Exception.--Notification shall not apply if:

(1) the person was admitted to the hospital at or around the time of death; or

(2) the notification to the coroner or medical examiner occurred more than 18 hours following the estimated time of the person's death.

§ 8627. Collaboration among departments and organ procurement organizations.

(a) Mandatory.--

(1) For purposes of the ongoing development and implementation of the Donate Life PA Registry, the Department of Transportation shall collaborate with the designated organ procurement organizations in applying for Federal or private grants recommended by the organ procurement organizations.

(2) The Department of Transportation, in consultation with designated organ procurement organizations, shall establish an annual education program for photo license technicians of the Department of Transportation regarding the provisions of this subchapter.

(b) Discretionary.--Other Commonwealth agencies may collaborate with the designated organ procurement organizations

in applying for Federal or private grants recommended by the organ procurement organizations.

§ 8627.1. Information relative to organ and tissue donation.

(a) Model curriculum.--Within nine months of the effective date of this section, the Department of Education, in consultation with the designated organ procurement organizations, shall develop and post on the Department of Education's publicly accessible Internet website a model curriculum regarding organ donation for students in grades 9 through 12 which public and nonpublic schools may use to provide instruction. The form and content of the model curriculum regarding organ donation shall be determined by the Department of Education. The model curriculum shall do all of the following, at a minimum:

(1) Provide a comprehensive, scientific overview of anatomical donation, its history and scientific advancement.

(2) Fully address the risks and benefits of and the myths and misunderstandings regarding organ and tissue donation.

(3) Explain the options available to minors and adults, including the option of designating oneself as an organ and tissue donor and the option of not designating oneself as an organ and tissue donor.

(b) Materials.--Within nine months of the effective date of this section, the Department of Education shall make related instructional materials available on the Department of Education's publicly accessible Internet website to public and nonpublic schools educating students in grades 9 through 12. The General Assembly shall encourage public and nonpublic schools to use the instructional materials. Nothing in this subsection shall be construed to require public or nonpublic schools to use the instructional materials.

(c) Parental option.--A minor enrolled in a public or nonpublic school shall be permitted to opt out of receiving instruction or materials relating to anatomical donation as provided under this section if the minor's parent or guardian has provided written notice to the school.

(d) Institutions of higher education.--

(1) Beginning with the 2018-2019 school year, each public institution of higher education in this Commonwealth may provide, in collaboration with the designated organ procurement organizations, information to its students, either through student health services or as part of the curriculum, which:

(i) provides a comprehensive, scientific overview of anatomical donation, its history and scientific advancement; and

(ii) addresses the risks and benefits of and the myths and misunderstandings about anatomical donation.

(2) Beginning with the 2019-2020 school year, each private institution of higher education in this Commonwealth may provide, in collaboration with the designated organ procurement organizations, information to its students, either through student health services or as part of the curriculum, which:

(i) provides a comprehensive, scientific overview of anatomical donation, its history and scientific advancement; and

(ii) addresses the risks and benefits of and the myths and misunderstandings about anatomical donation.

§ 8628. Requirements for physician and nurse training relative to organ and tissue donation and recovery.

The State Board of Medicine, the State Board of Osteopathic Medicine and the State Board of Nursing shall promulgate regulations requiring physicians, osteopathic physicians and professional nurses to complete a two-hour course on organ and tissue donation and recovery designed to address the clinical aspects of the donation and recovery process as a condition of license renewal. The course may include information about donation of hands, facial tissue and limbs and other vascularized composite allografts. The course shall be completed within five years of initial licensure or within five years of licensure renewal, whichever occurs first.

§ 8629. Department of Transportation.

The following shall apply:

(1) The Secretary of Transportation shall publish notice in the Pennsylvania Bulletin of the completion of the Department of Transportation's:

(i) Internet website established under section 8621(c)(2) (relating to the Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions);

(ii) establishment of the Donate Life PA registry; and

(iii) establishment of the hyperlinks to enable donation of money under section 8621.

(2) Until the notice under paragraph (1) is published, the Secretary of Transportation shall issue a statement every 60 days to the chairperson and minority chairperson of the Judiciary Committee of the Senate and the chairperson and minority chairperson of the Judiciary Committee of the House of Representatives regarding the actions taken by the department to complete the requirements under paragraph (1).

§ 8630. Department of Corrections.

The Department of Corrections shall, in consultation with an organ procurement organization, provide information to or make information available about anatomical donation to inmates in State correctional institutions. The information may also include information about donation of hands, facial tissue or limbs and other vascularized composite allografts. The information shall be provided or made available annually and shall include topics under section 8621(c)(2) (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions).

§ 8631. Study of organ procurement organizations.

(a) Study.--The Legislative Budget and Finance Committee shall conduct a study and performance evaluation of expenditures which utilize grants from the Department of Health under section 8622(b) (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund).

(b) Date.--The study under subsection (a) shall be completed no later than two years after the effective date of this section. Copies shall be submitted to the following:

(1) The Health and Human Services Committee of the Senate.

(2) The Judiciary Committee of the Senate.

(3) The Health Committee of the House of Representatives.

(4) The Judiciary Committee of the House of Representatives.

§ 8632. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act (Public Law

106-229, 15 U.S.C. § 7001 et seq.). This chapter shall not modify, limit or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act or authorize electronic delivery of any of the notices described in section 103(b) of the Electronic Signatures in Global and National Commerce Act.

Section 9. Subchapter C of Chapter 86 of Title 20 is repealed:

[SUBCHAPTER C
CORNEAL TRANSPLANTS

Sec.

8641. Removal of corneal tissue permitted under certain circumstances.

8642. Limitation of liability.

§ 8641. Removal of corneal tissue permitted under certain circumstances.

(a) General rule.--On a request from an authorized official of an eye bank for corneal tissue, a coroner or medical examiner may permit the removal of corneal tissue if all of the following apply:

(1) The decedent from whom the tissue is to be removed died under circumstances requiring an inquest.

(2) The coroner or medical examiner has made a reasonable effort to contact persons listed in section 8611 (relating to persons who may execute anatomical gift).

(3) No objection by a person listed in section 8611 is known by the coroner or medical examiner.

(4) The removal of the corneal tissue will not interfere with the subsequent course of an investigation or autopsy or alter the decedent's postmortem facial appearance.

(b) Definition.--As used in this section, the term "eye bank" means a nonprofit corporation chartered under the laws of this Commonwealth to obtain, store and distribute donor eyes to be used by physicians or surgeons for corneal transplants, research or other medical purposes and the medical activities of which are directed by a physician or surgeon in this Commonwealth.

§ 8642. Limitation of liability.

A person who acts in good faith in accordance with the provisions of this subchapter shall not be subject to criminal or civil liability arising from any action taken under this subchapter. The immunity provided by this section shall not extend to persons if damages result from the gross negligence, recklessness or intentional misconduct of the person.]

Section 10. Chapter 86 of Title 20 is amended by adding a subchapter to read:

**SUBCHAPTER D
HANDS, FACIAL TISSUE, LIMBS AND OTHER
VASCULARIZED COMPOSITE ALLOGRAFTS**

Sec.

8651. Scope of subchapter.

8652. Intent of General Assembly.

8653. Definitions.

8654. Requirement of explicit, specific and separate authorization.

8655. Agents, next of kin and other surrogate decision makers.

8656. Procedure for requesting hands, facial tissue, limbs and other vascularized composite allografts.

8657. Gift of vascularized composite allograft from decedent whose death is under investigation.

8657.1. Notification by coroners and medical examiners to district attorneys.

- 8658. Gifts of vascularized composite allografts.
- 8659. Rights and protections for certain individuals.
- 8660. Law on autopsies applicable.
- 8661. Vital records.
- 8662. Donees and vascularized composite allografts.
- 8663. Dissemination of information prohibited.
- 8664. Prohibited conduct.
- 8665. Funeral establishments.
- 8666. Limitation on liability.
- § 8651. Scope of subchapter.

This subchapter applies exclusively to hands, facial tissue, limbs and other vascularized composite allografts donated by an individual whose death is imminent or who has died in the hospital.

§ 8652. Intent of General Assembly.

It is the intent of the General Assembly to provide guidance to organ procurement organizations, hospitals, health care professionals and the public about the donation of hands, facial tissue, limbs and other vascularized composite allografts when donated by an individual whose death is imminent or who has died in the hospital. The General Assembly recognizes that a donation of a vascularized composite allograft from an individual whose death is imminent or who has died in the hospital, sometimes referred to as authorization for a vascularized composite allograft from a deceased donor, is a gift which must be given freely. In order to be given freely, explicit and specific consent must be obtained from donors or the donors' families. Obtaining explicit and specific consent is the only way to ensure transparency in the donation process and to preserve the public trust. It is the intention of the General Assembly to design policies and procedures to ensure that the donation of hands, facial tissue, limbs and other vascularized composite allografts from an individual whose death is imminent or who has died in the hospital is only made with explicit and specific consent.

§ 8653. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Minor." An individual under 18 years of age.

"Surrogate decision maker." An individual under section 8611(b)(1), (2), (3), (4), (5), (6), (7) or (8) (relating to persons who may execute anatomical gift).

§ 8654. Requirement of explicit, specific and separate authorization.

The following apply:

(1) An individual of sound mind who is 18 years of age or older may authorize recovery of hands, facial tissue, limbs and other vascularized composite allografts. The authorization may be in a will, living will, health care power of attorney, power of attorney or other document. In order to be valid, the authorization must be in writing, witnessed by two other individuals and explicitly and specifically state that the individual authorizes the recovery of the individual's hands, facial tissue, limbs or other vascularized composite allografts. The authorization must be provided separately from an anatomical donation. If the individual explicitly, specifically and separately authorizes such a gift and requests reconstructive surgery, then the surgery shall be provided at no cost to the individual or the individual's family or representative. Any limitations on the provision of the gift authorized by the

individual shall be honored by the hospital, a donee under section 8662 (relating to donees and vascularized composite allografts), health care professionals involved in the recovery and transplantation process, the organ procurement organizations and any other person involved with the donation and recovery of a vascularized composite allograft. If the individual authorizes a gift of hands, facial tissue, limbs or other vascularized composite allografts, then authorization of a surrogate decision maker shall not be necessary.

(2) It is unlawful for a minor to authorize the donation of the minor's hands, facial tissue, limbs or other vascularized composite allografts. In the case of a minor whose death is imminent or who has died in a hospital, a parent or guardian may authorize donation of the minor's hands, facial tissue, limbs or other vascularized composite allografts if the parent or guardian does not have actual notice of contrary indications on the part of the minor with respect to making a donation of the minor's hands, facial tissue, limbs or other vascularized composite allografts and there is no actual notice of opposition by the other parent. If the parent or guardian has actual notice of contrary indications or there is actual notice of opposition by the other parent, then the parent or guardian is not authorized to make such a gift. The hospital, health care professionals, organ procurement organization and a donee under section 8662 shall not effectuate a donation if the minor evidenced contrary indications regarding donation of the minor's hands, facial tissue, limbs or other vascularized composite allografts or there is actual notice of opposition by the other parent.

(3) A gift of a vascularized composite allograft under this section may be revoked or amended at any time and in the manner specified in section 8615 (relating to amendment or revocation of gift).

§ 8655. Agents, next of kin and other surrogate decision makers.

The following apply:

(1) Subject to paragraph (2), a surrogate decision maker, in order of priority stated when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent as set forth in subparagraph (ii) or evidence of a prohibition, amendment, revocation or denial of a gift of a vascularized composite allograft as set forth in subparagraph (i) or actual notice of opposition by a member of the same or a prior class, may authorize the donation of hands, facial tissue, limbs or other vascularized composite allografts of an individual who is at least 18 years of age and whose death is imminent or who has died in a hospital if:

(i) there is no evidence of a prohibition, amendment, revocation or denial of a gift of hands, facial tissue, limbs and other vascularized composite allografts in a living will, will, advance health care directive, health care power of attorney, power of attorney or other document of the individual; and

(ii) there is no actual notice of contrary indications by the individual regarding such a gift in any form, including through statements made by the individual to health care professionals, to family members or to the surrogate decision maker. If the surrogate decision maker has actual notice of contrary

indications on the part of the individual with respect to making a donation of the individual's hands, facial tissue, limbs or other vascularized composite allografts, then it is unlawful for the surrogate decision maker to make such a gift. The hospital, health care professionals, donees under section 8662 (relating to donees and vascularized composite allografts) and organ procurement organization shall not effectuate a donation if the individual evidenced contrary indications regarding donation of the individual's hands, facial tissue, limbs or other vascularized composite allografts.

(2) A surrogate decision maker may not authorize a gift of hands, facial tissue, limbs or other vascularized composite allografts on the part of an individual under paragraph (1) if any of the following apply:

(i) The district attorney or a law enforcement officer notifies the organ procurement organization that the surrogate decision maker is a suspect or person of interest in causing the disease, illness, injury, condition or death of the individual.

(ii) The surrogate decision maker is the subject of a protection from abuse order, an order issued under 42 Pa.C.S. Ch. 62A (relating to protection of victims of sexual violence or intimidation) or similar order from a court that was issued to the individual.

(iii) The district attorney or a law enforcement officer notifies the organ procurement organization that the surrogate decision maker has been arrested or detained in connection with the disease, illness, injury, condition or death of the individual.

§ 8656. Procedure for requesting hands, facial tissue, limbs and other vascularized composite allografts.

The following applies to organ procurement organizations, health care professionals, donees under section 8662 (relating to donees and vascularized composite allografts) and other persons who request a gift of hands, facial tissue, limbs and other vascularized composite allografts from a surrogate decision maker:

(1) The request for a donation must be made separately from a request for donation under Subchapter B (relating to express anatomical gifts). The request must explicitly and specifically identify donations of hands, facial tissue, limbs and other vascularized composite allografts as distinct from traditional organs such as heart, liver, or lung or tissues under Subchapter B. The discussion must educate the surrogate decision maker about the process of recovery of vascularized composite allografts and must clearly define and explain all of the following:

(i) What a vascularized composite allograft is, the benefit to the recipient and precisely what will be recovered.

(ii) That any prior generalized authorization for an anatomical gift under Subchapter B does not include a gift of a hand, facial tissue, limb or other vascularized composite allograft.

(iii) That permission for a gift of a hand, facial tissue, limb or other vascularized composite allograft must be given separately from the permission for a gift under Subchapter B.

(iv) That the appearance of the individual whose death is imminent or who has died in a hospital will be significantly altered after the recovery of the gift and

that upon request the recovery team will perform reconstructive surgery on the individual at no cost to the individual, the individual's family or surrogate decision maker. In addition, the discussion must explain that the recovery of vascularized composite allografts may impact burial arrangements and that an open casket may not be possible.

(v) That the identity of the individual whose death is imminent or who has died in a hospital may not be able to be protected due to fingerprints or birthmarks.

(2) A deceased donor authorization form shall be used which specifically identifies the option of authorizing a gift of hands, facial tissue, limbs and other vascularized composite allografts. The form must include a provision which states that the surrogate decision maker and family of the individual whose death is imminent or who has died in a hospital understands the relevant anatomical details of the donation, the alteration of the appearance of the individual, including the impact of the recovery of vascularized composite allografts upon funeral arrangements, and that, despite the best efforts of the organ procurement organization, the anonymity of the individual may not be protected. Further, the form must provide information about the nature of the discussion required under paragraph (1), including:

(i) the date and time of the discussion;

(ii) for individuals who hold a professional or occupational license, the names, addresses, telephone numbers and professional or occupational license numbers of the individuals who made the request for the donation and provided the information under paragraph (1); and

(iii) a summary of the topics discussed and which surrogate decision maker authorized the gift of a vascularized composite allograft.

§ 8657. Gift of vascularized composite allograft from decedent whose death is under investigation.

(a) Applicability.--This section shall apply in all cases when the coroner or medical examiner must determine the cause of death and whether the death may have resulted from criminal acts or criminal neglect.

(b) Denial of recovery of vascularized composite allograft.--If a coroner or medical examiner is considering denying recovery of the vascularized composite allograft of an individual, the coroner or medical examiner shall comply with the procedure set forth in this subsection. The following apply:

(1) The coroner or medical examiner or a designee shall meet with a medical advisory group composed of the individual's attending physician or a designee, the transplant surgeon or a designee and the applicable designated organ procurement organization at the hospital, during a reasonable time consistent with donation and preservation of forensic evidence. In addition, the forensic pathologist may participate as part of the medical advisory group by appearing in person at the hospital, by telephone or through electronic means.

(2) The medical advisory group shall provide the coroner or medical examiner or a designee with the clinical findings of testing and medical procedures performed on the individual while at the hospital.

(3) If, after the review of the testing and medical procedures set forth in paragraph (2), the coroner or medical examiner or a designee intends to deny recovery of the

vascularized composite allograft, the coroner or medical examiner or a designee must provide a written statement explaining the reason for the denial. The statement shall be provided to the designated organ procurement organization upon request. The coroner or medical examiner or a designee shall ensure the written statement is made part of the coroner's or medical examiner's file. The written statement shall be exempt from the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(c) Forms.--The coroner or medical examiner shall develop a form for the purpose of stating that the coroner or medical examiner has denied the recovery of the vascularized composite allograft as set forth in subsection (b). The coroner or medical examiner shall complete the form when denying recovery of the vascularized composite allograft as set forth in subsection (b).

§ 8657.1. Notification by coroners and medical examiners to district attorneys.

(a) Applicability.--This section shall apply in all cases when the coroner or medical examiner:

(1) must determine the cause of death and whether the death may have resulted from criminal acts or criminal neglect; and

(2) the coroner or medical examiner is not the coroner or medical examiner of the county in which the cause precipitating the death of the individual is believed to have occurred.

(b) Procedure.--The coroner or medical examiner specified in subsection (a)(2) shall notify the coroner or medical examiner of the county in which the cause precipitating the death of the individual is believed to have occurred. After receiving the notification, the coroner or medical examiner shall notify or cause to be notified the district attorney of the county in which the cause precipitating the death of the individual is believed to have occurred.

§ 8658. Gifts of vascularized composite allografts.

(a) Gift.--The following apply to vascularized composite allografts:

(1) If the individual whose death is imminent or has died in the hospital has a document of gift which authorizes a gift of a vascularized composite allograft, the organ procurement organization representative or the designated requestor shall attempt to notify a surrogate decision maker.

(2) If no document of gift is known to the organ procurement organization representative or the designated requestor, then the organ procurement organization representative or the designated requestor may ask the surrogate decision maker whether the individual had a validly executed document of gift. If there is no evidence of gift of a vascularized composite allograft by the individual, the organ procurement organization representative or the designated requestor shall notify the surrogate decision maker of the option to donate a vascularized composite allograft. The notification shall be performed in accordance with section 8656 (relating to procedure for requesting hands, facial tissue, limbs and other vascularized composite allografts).

(3) The hospital administrator or the hospital administrator's designated representative shall indicate in the medical record of the individual the information under this paragraph and paragraph (2). The information shall also be communicated by the hospital administrator or the hospital

administrator's designee to the organ procurement organization or designated requestor, as appropriate:

(i) whether or not a document of gift is known to exist and whether a gift of a vascularized composite allograft was made;

(ii) if a gift of a vascularized composite allograft was made, the name of the person granting the gift and that person's relationship to the individual; and

(iii) all of the following:

(A) Whether the individual executed an advance health care directive, living will, power of attorney, health care power of attorney, will or other document, including a do-not-resuscitate order, evidencing an intention to limit, withdraw or withhold life-sustaining measures.

(B) Whether the individual indicated in an advance health care directive, living will, power of attorney, health care power of attorney, will or other document an intention to limit the anatomical gifts of the individual in any way, including the intention to limit an anatomical gift to parts of the body which do not require a ventilator or other life-sustaining measures, or to deny making or refusing to make a gift of a vascularized composite allograft.

(C) Whether the individual amended or revoked a gift of a vascularized composite allograft, in any document specified in this subparagraph or in any other document or in accordance with section 8615 (relating to amendment or revocation of gift).

(b) Testing.--

(1) This subsection shall apply if:

(i) a hospital refers an individual whose death is imminent or who has died in a hospital to an organ procurement organization;

(ii) the organ procurement organization, in consultation with the individual's attending physician, determines, based upon a medical record review and other information supplied by the individual's attending physician, that the individual may be a prospective donor of a vascularized composite allograft; and

(iii) the individual has not:

(A) indicated in an advance health care directive, a living will, power of attorney, health care power of attorney, will, do-not-resuscitate order or other document an intention to either limit the anatomical gifts of the individual to parts of the body which do not require a ventilator or other life-sustaining measures or indicated an intention to deny making or refusing to make a gift of a vascularized composite allograft; or

(B) amended or revoked a gift of a vascularized composite allograft in any document specified in subsection (a)(3) or in any other document or in accordance with section 8615.

(2) If the requirements of paragraph (1) are met, the following shall apply:

(i) Subject to the wishes expressed by the individual under subsection (a)(3), the organ procurement organization may conduct a blood or tissue test or minimally invasive examination which is reasonably necessary to evaluate the medical suitability of a

vascularized composite allograft that is or may be the subject of a gift. Testing and examination under this subparagraph shall comply with a denial or refusal to make a gift of a vascularized composite allograft or any limitation expressed by the individual with respect to the vascularized composite allograft, or a limitation in the provision of a ventilator or other life-sustaining measures, as specified in subsection (a)(3) or a revocation or amendment to a gift of a vascularized composite allograft as specified in a document in subsection (a)(3) or in any other document or in accordance with section 8615. The results of tests and examinations under this subparagraph shall be used or disclosed only:

(A) to evaluate medical suitability for donation of a vascularized composite allograft and to facilitate the donation process; and

(B) as required or permitted by law.

(ii) Subject to the wishes expressed by the individual under subsection (a)(3), the hospital may not withdraw any measures which are necessary to maintain the medical suitability of the vascularized composite allograft until the organ procurement organization or designated requestor, as appropriate, has had the opportunity to advise the surrogate decision maker of the option to make a gift of a vascularized composite allograft and has received or been denied authorization to proceed with recovery of the vascularized composite allograft.

(c) Testing after death.--Subject to the individual's wishes under subsection (a)(3), after an individual's death, a person to whom an anatomical gift may pass under section 8662 (relating to donees and vascularized composite allografts) may conduct a test or examination which is reasonably necessary to evaluate the medical suitability of the vascularized composite allograft for its intended purpose.

(d) Recipients.--Subject to the individual's wishes under subsection (a)(3) and as set forth in this subchapter, a person that accepts a gift of a vascularized composite allograft may allow embalming, burial or cremation and the use of remains in a funeral service. The person to whom the part passes under section 8662, upon the death of the individual and before embalming, burial or cremation, shall cause the vascularized composite allograft to be removed without unnecessary mutilation.

(e) Physicians.--Neither the physician who attends the individual at death nor the physician who determines the time of the individual's death may participate in the procedures for removing or transplanting a vascularized composite allograft.

(f) Coordination of procurement and use.--The organ procurement organization, hospital personnel and other individuals involved in the process of recovering a vascularized composite allograft shall limit the testing and examination of the individual under this section so as to comply with the wishes of the individual under subsection (a)(3).

§ 8659. Rights and protections for certain individuals.

(a) General rule.--An individual who is in need of a vascularized composite allograft shall not be deemed ineligible to receive a vascularized composite allograft solely because of the individual's physical or mental disability, except to the extent that the physical or mental disability has been found by a physician or surgeon following an individualized evaluation

of the individual to be medically significant to the provision of the vascularized composite allograft. If an individual has the necessary support system to assist the individual in complying with posttransplant medical requirements, an individual's inability to independently comply with those requirements shall not be deemed to be medically significant.

(b) Definition.--As used in this section, the term "disability" shall have the same meaning as in the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327).

§ 8660. Law on autopsies applicable.

(a) General rule.--Subject to the provisions of section 8657 (relating to gift of vascularized composite allograft from decedent whose death is under investigation), the provisions of this subchapter are subject to the laws of this Commonwealth prescribing powers and duties with respect to autopsies.

(b) Copies of autopsy reports.--Notwithstanding 18 Pa.C.S. Ch. 91 (relating to criminal history record information), an organ procurement organization is authorized to obtain a copy of an autopsy report in a timely fashion upon request and payment of reasonable fees.

§ 8661. Vital records.

An organ procurement organization may, upon request and payment of associated fees, obtain certified copies of death records of a donor from the Division of Vital Records of the Department of Health.

§ 8662. Donees and vascularized composite allografts.

The following persons may become donees of gifts of vascularized composite allografts for any of the purposes stated:

(1) Any hospital, surgeon or physician for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy.

(3) Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.

(4) Any specified individual for therapy or transplantation needed by the individual.

(5) The board.

§ 8663. Dissemination of information prohibited.

(a) General rule.--Except as provided in subsection (b), no organ procurement organization, eye bank or tissue bank may divulge any individually identifiable information acquired in the course of performing the organization's or bank's responsibilities under this chapter except for the purposes of facilitating transplantation of vascularized composite allografts.

(b) Donors and recipients.--An organ procurement organization, eye bank or tissue bank may communicate individually identifiable information of the donor and recipient if expressly authorized by:

(1) the recipient; and

(2) if the donor is alive, the donor, or, if the donor is deceased, the next of kin of the donor.

§ 8664. Prohibited conduct.

(a) General rule.--An organ procurement organization, an eye bank or a tissue bank shall not do any of the following with respect to recovery and transplantation of vascularized composite allografts:

(1) Disparage the services or business of another organ procurement organization, eye bank or tissue bank by false or misleading representations of fact.

(2) Engage in fraudulent conduct to influence the selection by a hospital of an eye bank or tissue bank.

(3) Engage in unlawful competition or discrimination.

(b) Construction.--This subsection is not intended to restrict or preclude an organ procurement organization from marketing or promoting the organ procurement organization's services regarding recovery of vascularized composite allografts in the normal course of business.

§ 8665. Funeral establishments.

(a) General rule.--Except as set forth in subsection (b), a funeral director or a funeral establishment shall not:

(1) remove vascularized composite allografts from a corpse;

(2) permit others to remove vascularized composite allografts from a corpse; or

(3) use funeral establishment facilities to remove vascularized composite allografts from a corpse.

(b) Exception.--Subsection (a) shall not apply and removal is permissible if the removal is:

(1) necessary to perform embalming or other services in preparation for burial or cremation; and

(2) authorized in writing by a family member or guardian.

§ 8666. Limitation on liability.

A person who acts in good faith in accordance with the provisions of this subchapter shall not be subject to criminal or civil liability arising from any action taken under this subchapter. The civil immunity provided by this section shall not extend to persons if damages result from the gross negligence, recklessness or intentional misconduct of the person. The criminal immunity provided by this section shall not extend to intentional, knowing or reckless conduct.

Section 11. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) This section.

(ii) The addition of 20 Pa.C.S. § 8613(i).

(iii) The addition of 20 Pa.C.S. § 8619(a.1).

(iv) The amendment of 20 Pa.C.S. § 8621.

(v) The addition of 20 Pa.C.S. § 8626.

(vi) The addition of 20 Pa.C.S. § 8626.1.

(vii) The addition of 20 Pa.C.S. § 8626.2.

(viii) The addition of 20 Pa.C.S. § 8627.1.

(ix) The addition of 20 Pa.C.S. § 8628.

(x) The addition of 20 Pa.C.S. § 8629.

(xi) The addition of 20 Pa.C.S. § 8631.

(xii) The addition of 20 Pa.C.S. Ch. 86 Subch. D.

(2) The amendment of 20 Pa.C.S. § 305(d)(2) shall take effect in 60 days.

(3) The remainder of this act shall take effect upon publication of the notice under 20 Pa.C.S. § 8629.

APPROVED--The 23rd day of October, A.D. 2018.

TOM WOLF