

PROBATE, ESTATES AND FIDUCIARIES CODE (20 PA.C.S.) - AMEND
Act of Dec. 1, 1994, P.L. 655, No. 102
Session of 1994
No. 1994-102

Cl. 20

SB 1662

AN ACT

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, further providing for the jurisdiction of the orphans' court regarding powers of attorney and for the situs of an inter vivos trust; permitting a decedent by will to expressly exclude or limit the right of an individual or class to succeed to property passing by intestate succession; further providing for a will signed by mark; confirming the abolition of the doctrine of worthier title; providing for penalty clauses for contest in wills and trusts; increasing certain monetary limits; clarifying that the court may dispense with the appointment of a guardian for a minor under certain circumstances; providing for the right of recovery of Federal estate tax; clarifying that the cy pres doctrine applies to testamentary and inter vivos trusts; further providing for the effect of divorce on designation of beneficiaries; confirming the right to disclaim for a joint tenant with right of survivorship; making the rules of abatement for decedents' estates applicable to inter vivos and testamentary trusts; further providing for the form and implementation of a power of attorney and for declarations governing life-sustaining treatment; and providing for anatomical gifts.

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

Section 1. Sections 712(4), 724(b)(2), 2101, 2502 introductory paragraph and (2) and 2517 of Title 20 of the Pennsylvania Consolidated Statutes are amended to read:

§ 712. Nonmandatory exercise of jurisdiction through orphans' court division.

The jurisdiction of the court of common pleas over the following may be exercised through either its orphans' court division or other appropriate division:

* * *

(4) Powers of attorney.--All matters pertaining to the exercise of powers by attorneys in fact or agents acting under powers of attorney as provided in Chapter 56 (relating to powers of attorney) [when the principal is or may be deceased, disabled or incapacitated].

§ 724. Situs of inter vivos trust.

* * *

(b) Not provided for in trust instrument.--If the trust instrument does not expressly provide for the situs of the inter

vivos trust, its situs shall be:

* * *

(2) Nonresident settlor.--In the case of an inter vivos trust whose settlor[:]

(i)] is not domiciled in the Commonwealth at the time when during his lifetime the first application is made to a court concerning the trust[;] or

[(ii)] was not domiciled in the Commonwealth at his death if the first application to a court concerning the trust was made thereafter, in a county in which any trustee resides **or is located**, and if there is no such trustee, then in a county where property of the trust is located.

§ 2101. Intestate estate.

(a) **General rule.**-- All or any part of the estate of a decedent not effectively disposed of by will or otherwise passes to his heirs as prescribed in this chapter[.] , **except as modified by the decedent's will.**

(b) **Modification by decedent's will.**--A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which the individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his intestate share.

§ 2502. Form and execution of a will.

Every will[,] shall be in writing and shall be signed by the testator at the end thereof, subject to the following rules and exceptions:

* * *

(2) Signature by mark.--If the testator is unable to sign his name for any reason, a will to which he makes his mark and to which his name is subscribed [in his presence] before or after he makes his mark[,] shall be as valid as though he had signed his name thereto: Provided, That he makes his mark in the presence of two witnesses who sign their names to the will in his presence.

* * *

§ 2517. Rule in Shelley's case **and doctrine of worthier title** .

(a) **Rule in Shelley's case.**-- The rule in Shelley's case and its corollaries shall not be applied, and a devise or bequest directly or in trust which shall express an intent to create an estate for life with remainder to the life tenant's heirs or the heirs of his body or his issue or his next of kin or persons described by words of similar import[,] shall not operate to give such life tenant an estate in fee in real estate or an absolute estate in personalty.

(b) **Doctrine of worthier title.**--The doctrine of worthier title shall not be applied as a rule of law or as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's heirs, heirs at law, next of kin, distributees, relatives or family or language of similar import shall not create or presumptively create a reversionary interest in the transferor.

Section 2. Title 20 is amended by adding a section to read:
§ 2521. Penalty clause for contest.

A provision in a will or trust purporting to penalize an interested person for contesting the will or trust or instituting other proceedings relating to the estate or trust is unenforceable if probable cause exists for instituting proceedings.

Section 3. Sections 3101(a), 3102, 3121, 3504, 3531, 3701, 5101 and 5404(b) of Title 20 are amended to read:

§ 3101. Payments to family and funeral directors.

(a) Wages, salary or employee benefits.--Any employer of a person dying domiciled in this Commonwealth at any time after the death of the employee, whether or not a personal representative has been appointed, may pay wages, salary or any employee benefits due the deceased in an amount not exceeding [\$3,500] **\$5,000** to the spouse, any child, the father or mother, or any sister or brother (preference being given in the order named) of the deceased employee. Any employer making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and he shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

* * *

§ 3102. Settlement of small estates on petition.

When any person dies domiciled in the Commonwealth owning property (exclusive of real estate and of property payable under section 3101 (relating to payments to family and funeral directors), but including personal property claimed as the family exemption) of a gross value not exceeding [\$10,000] **\$25,000**, the orphans' court division of the county wherein the decedent was domiciled at the time of his death, upon petition of any party in interest, in its discretion, with or without appraisement, and with such notice as the court shall direct, and whether or not letters have been issued or a will probated, may direct distribution of the property (including property not paid under section 3101) to the parties entitled thereto. The authority of the court to award distribution of personal property under this section shall not be restricted because of the decedent's ownership of real estate, regardless of its value. The decree of distribution so made shall constitute sufficient authority to all transfer agents, registrars and others dealing with the property of the estate to recognize the persons named therein as entitled to receive the property to be distributed without administration, and shall in all respects have the same effect as a decree of distribution after an accounting by a personal representative. Within one year after such a decree of distribution has been made, any party in interest may file a petition to revoke it because an improper distribution has been ordered. If the court shall find that an improper distribution has been ordered, it shall revoke the decree and shall direct restitution as equity and justice shall require.

§ 3121. When allowable.

The spouse of any decedent dying domiciled in the

Commonwealth, and if there be no spouse, or if he has forfeited his rights, then such children as are members of the same household as the decedent, and in the event there are no such children, then the parent or parents of the decedent who are members of the same household as the decedent, may retain or claim as an exemption either real or personal property, or both, not theretofore sold by the personal representative, to the value of [\$2,000] **\$3,500** : Provided, That property specifically devised or bequeathed by the decedent, or otherwise specifically disposed of by him, may not be so retained or claimed if other assets are available for the exemption. The surviving husband or wife shall be a competent witness as to all matters pertinent to the issue of forfeiture of the right to exemption.

§ 3504. Representation of parties in interest.

Persons interested in the estate as beneficiary, heir, or next of kin, if minors or otherwise legally incapacitated, and possible unborn or unascertained persons, when not already represented by a fiduciary, may be represented in an accounting by a guardian or trustee ad litem, if the court deems it necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person **who is a minor or otherwise** legally incapacitated, unborn, or unascertained, when there is a living person sui juris having a similar interest or when such person is or would be issue of a living ancestor sui juris and interested in the estate whose interest is not adverse to his. If the whereabouts of any beneficiary or next of kin is unknown, or if there is doubt as to his existence the court shall make such provision for service of notice and representation in the accounting as it deems proper.

§ 3531. Estates not exceeding [\$10,000] **\$25,000** .

When the gross real and personal estate of a decedent does not exceed the value of [\$10,000] **\$25,000** , the personal representative, after the expiration of one year from the date of the first complete advertisement of the grant of letters, may present his petition to the court with an annexed account showing the administration of the estate, the distribution theretofore made and suggesting the proper distribution of the estate not theretofore distributed. Thereupon, the court, upon satisfactory proof of notice to all known parties in interest, may approve the distribution theretofore made and order distribution of the assets not theretofore distributed and discharge the personal representative and his sureties from future liability without the expense of proceedings as in a formal account. The court may discharge only the surety from future liability, and may allow the personal representative to continue without surety upon condition that no further assets shall come into the possession of the personal representative until he files another bond, with sufficient surety, as required by the register.

§ 3701. Power of decedent.

A testator, settlor, donor or possessor of any appropriate power of appointment may direct how the Federal estate tax or the Federal generation-skipping tax due because of his death, including interest and penalties, shall be apportioned or may grant a discretionary power to another so to direct, but any

direction regarding apportionment of the Federal generation-skipping tax must expressly refer to that tax. **Any direction waiving the right of recovery of Federal estate tax, provided for under section 2207A of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2207A), on the property includable in the taxable estate by reason of section 2044 of the Internal Revenue Code of 1986, must expressly refer to that right.** Any such direction shall take precedence over the provisions of this chapter insofar as the direction provides for the payment of the tax or any part thereof from property the disposition of which can be controlled by the instrument containing the direction or delegating the power to another.

§ 5101. When guardian unnecessary.

When the entire real and personal estate, wherever located of a resident or nonresident minor has a net value of [\$10,000] **\$25,000** or less, all or any part of it may be received and held or disposed of by the minor, or by the parent or other person maintaining the minor, without the appointment of a guardian or the entry of security, in any of the following circumstances:

(1) Award from decedent's estate or trust.--When the court having jurisdiction of a decedent's estate or of a trust in awarding the interest of the minor shall so direct.

(2) Interest in real estate.--When the court having jurisdiction to direct the sale or mortgage of real estate in which the minor has an interest shall so direct as to the minor's interest in the real estate.

(3) Other circumstances.--In all other circumstances, when the court which would have had jurisdiction to appoint a guardian of the estate of the minor shall so direct.

§ 5404. Declaration.

* * *

(b) Form.--A declaration may but need not be in the following form and may include other specific directions, including, but not limited to, designation of another person to make the treatment decision for the declarant if the declarant is incompetent and is determined to be in a terminal condition or to be permanently unconscious.

DECLARATION

I, _____, being of sound mind, willfully and voluntarily make this declaration to be followed if I become incompetent. This declaration reflects my firm and settled commitment to refuse life-sustaining treatment under the circumstances indicated below.

I direct my attending physician to withhold or withdraw life-sustaining treatment that serves only to prolong the process of my dying, if I should be in a terminal condition or in a state of permanent unconsciousness.

I direct that treatment be limited to measures to keep me comfortable and to relieve pain, including any pain that might occur by withholding or withdrawing life-sustaining treatment.

In addition, if I am in the condition described above, I feel especially strong about the following forms of treatment:

I () do () do not want cardiac resuscitation.

I () do () do not want mechanical respiration.
I () do () do not want tube feeding or any other
artificial or invasive form of nutrition (food) or hydration
(water).
I () do () do not want blood or blood products.
I () do () do not want any form of surgery or invasive
diagnostic tests.
I () do () do not want kidney dialysis.
I () do () do not want antibiotics.

I realize that if I do not specifically indicate my
preference regarding any of the forms of treatment listed
above, I may receive that form of treatment.

Other instructions:

I () do () do not want to designate another person as
my surrogate to make medical treatment decisions for me if I
should be incompetent and in a terminal condition or in a
state of permanent unconsciousness. Name and address of
surrogate (if applicable):
Name and address of substitute surrogate (if surrogate
designated above is unable to serve):

**I () do () do not want to make an anatomical gift of
all or part of my body, subject to the following limitations,
if any:**

I made this declaration on the day of (month,
year).

Declarant's signature:

Declarant's address:

The declarant or the person on behalf of and at the
direction of the declarant knowingly and voluntarily signed
this writing by signature or mark in my presence.

Witness's signature:

Witness's address:

Witness's signature:

Witness's address:

* * *

Section 4. Section 5602(a) of Title 20 is amended by adding
a paragraph to read:

§ 5602. Form of power of attorney.

(a) Specification of powers.--A principal may, by inclusion
of the language quoted in any of the following paragraphs or by
inclusion of other language showing a similar intent on the part
of the principal, empower his attorney-in-fact to do any or all
of the following, each of which is defined in section 5603
(relating to implementation of power of attorney):

* * *

**(23) "To make an anatomical gift of all or part of my
body."**

* * *

Section 5. Section 5603 of Title 20 is amended by adding a
subsection to read:

§ 5603. Implementation of power of attorney.

* * *

**(u.1) Power to make anatomical gift.--A power "to make an
anatomical gift of all or part of my body" shall mean that the
attorney-in-fact may arrange and consent to procedures to make**

an anatomical gift in accordance with Chapter 86 (relating to anatomical gifts).

* * *

Section 6. Sections 6110 heading and (a), 6111.2, 6117, 6201 and 7183 of Title 20 are amended to read:

§ 6110. Administration of charitable [estates] **interests .**

(a) General rule.--Except as otherwise provided by the conveyor, if the charitable purpose for which an interest shall be conveyed **outright or in a testamentary or inter vivos trust** shall be or become indefinite or impossible or impractical of fulfillment, or if it shall not have been carried out for want of a trustee or because of the failure of a trustee to designate such purpose, the court may, on application of the trustee or of any interested person or of the Attorney General, after proof of notice to the Attorney General when he is not the petitioner, order an administration or distribution of the [estate] **interest** for a charitable purpose in a manner as nearly as possible to fulfill the intention of the conveyor, whether his charitable intent be general or specific.

* * *

§ 6111.2. Effect of divorce on designation of beneficiaries.

If a person domiciled in this Commonwealth at the time of his death is divorced from the bonds of matrimony after designating his spouse as beneficiary of a life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to his spouse, any designation in favor of his former spouse which was revocable by him after the divorce shall become ineffective for all purposes **and shall be construed as if such former spouse had predeceased him** unless it appears from the wording of the designation [or from either] , a court order or a written contract between the person and [his] **such former** spouse that the designation was intended to survive the divorce. Unless restrained by court order, no insurance company, pension or profit-sharing plan trustee or other obligor shall be liable for making payments to a former spouse which would have been proper in the absence of this section. Any former spouse to whom payment is made shall be answerable to anyone prejudiced by the payment.

§ 6117. Rule in Shelley's case **and doctrine of worthier title .**

(a) **Rule in Shelley's case.**-- The rule in Shelley's case and its corollaries shall not be applied, and a conveyance directly or in trust which shall express an intent to create an estate for life with remainder to the life tenant's heirs or the heirs of his body or his issue or his next of kin or persons described by words of similar import, shall not operate to give such life tenant an estate in fee in real estate or an absolute estate in personalty.

(b) **Doctrine of worthier title.**--The doctrine of worthier title shall not be applied as a rule of law or as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's heirs, heirs at law, next of kin, distributees, relatives or family or language of similar import shall not create or presumptively create a reversionary interest in the transferor.

§ 6201. Right to disclaim.

A person to whom an interest in property would have devolved by whatever means, including a beneficiary under a will, an appointee under the exercise of a power of appointment, a person entitled to take by intestacy, **a joint tenant with right of survivorship**, a donee of an inter vivos transfer, a donee under a third-party beneficiary contract (including beneficiaries of life insurance and annuity policies and pension, profit-sharing and other employee benefit plans), and a person entitled to a disclaimed interest, may disclaim it in whole or in part by a written disclaimer which shall:

- (1) describe the interest disclaimed;
- (2) declare the disclaimer and extent thereof; and
- (3) be signed by the disclaimant.

The right to disclaim shall exist notwithstanding any limitation on the interest in the nature of a spendthrift provision or similar restriction.

§ 7183. Notice, audits, reviews, and distribution.

The provisions concerning accounts, audits, reviews, distributions and rights of distributees in trust estates shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3503 (relating to notice to parties in interest).

Section 3504 (relating to representation of parties in interest).

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3532(c) (relating to at risk of personal representative).

Section 3533 (relating to award upon final confirmation of account).

Section 3534 (relating to distribution in kind).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3538 (relating to distributions involving persons born out of wedlock).

Section 3539 (relating to change in law after pattern of distribution established).

Section 3540 (relating to absentee and additional distributees).

Section 3541 (relating to order of abatement).

Section 3544 (relating to liability of personal representative for interest).

Section 3545 (relating to transcripts of balances due by personal representative).

Section 7. Chapter 86 of Title 20 is repealed.

Section 8. Title 20 is amended by adding a chapter to read:

CHAPTER 86
ANATOMICAL GIFTS

Subchapter

- A. General Provisions
- B. Express Anatomical Gifts
- C. Corneal Transplants

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

8601. Definitions.

§ 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:

"Acute care general hospital." Any hospital which has an emergency room facility.

"Advisory committee." The Organ Donation Advisory Committee established under section 8622 (relating to Organ Donation Awareness Trust Fund).

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

"Board." The Humanity Gifts Registry.

"Decedent." A deceased individual, including a stillborn infant or fetus.

"Donor." An individual who makes a gift of all or part of his body.

"Fund." The Organ Donation Awareness Trust Fund established under section 8622 (relating to Organ Donation Awareness Trust Fund).

"Hospital." An institution licensed in this Commonwealth having an organized medical staff established for the purpose of providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for the care of persons who are injured, disabled, pregnant, diseased, sick or mentally ill or rehabilitation services for the rehabilitation of persons who are injured, disabled, pregnant, diseased, sick or mentally ill. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties. The term does not include facilities caring exclusively for the mentally ill.

"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).

"Part." Organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

"Person." An individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

"Physician" or "surgeon." A physician or surgeon licensed or authorized to practice under the laws of any state.

"State." Any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

"Unlawful competition." Conduct declared unlawful under section 3 of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

SUBCHAPTER B
EXPRESS ANATOMICAL GIFTS

Sec.

- 8611. Persons who may execute anatomical gift.
- 8612. Persons who may become donees; purposes for which anatomical gifts may be made.
- 8613. Manner of executing anatomical gifts.
- 8614. Delivery of document of gift.
- 8615. Amendment or revocation of gift.
- 8616. Rights and duties at death.
- 8617. Requests for anatomical gifts.
- 8618. Voluntary contribution system.
- 8619. Use of driver's license or identification card to indicate organ or tissue donation.
- 8620. Police and emergency personnel responsibilities.
- 8621. Organ Donation Awareness Trust Fund contributions.
- 8622. Organ Donation Awareness Trust Fund.
- 8623. Confidentiality requirement.
- 8624. Prohibited activities.

§ 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 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.

(b) Others entitled to donate anatomy of decedent.--Any of the following persons, 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 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 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.

(c) Donee not to accept in certain cases.--If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after or immediately before death.

(d) Examinations.--A gift of all or part of a body authorizes any examination necessary to assure medical

acceptability of the gift for the purposes intended.

(e) Rights of donee paramount.--The rights of the donee created by the gift are paramount to the rights of others except as provided by section 8616(d) (relating to rights and duties at death).

§ 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.

§ 8613. Manner of executing anatomical gifts.

(a) Gifts by will.--A gift of all or part of the body under section 8611(a) (relating to persons who may execute anatomical gift) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) Gifts by other documents.--A gift of all or part of the body under section 8611(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor is mentally competent to signify his desire to sign the document but is physically unable to do so, the document may be signed for him by another at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) Specified and unspecified donees.--The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(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.

(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, 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.

(f) Documentation of gifts by others.--Any gift by a person designated in section 8611(b) shall be made by a document signed by him or made by his telegraphic, recorded telephonic or other recorded message.

§ 8614. Delivery of document of gift.

If the gift is made by the donor to a specified donee, the will, card or other document or an executed copy thereof may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card or other document or an executed copy thereof may be deposited in any hospital, bank or storage facility that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

§ 8615. Amendment or revocation of gift.

(a) Document delivered to donee.--If the will, card or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by any of the following:

(1) The execution and delivery to the donee of a signed statement.

(2) An oral statement made in the presence of two persons and communicated to the donee.

(3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee.

(4) A signed card or document found on his person or in his effects.

(b) Document not delivered to donee.--Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction,

cancellation or mutilation of the document and all executed copies thereof.

(c) Gifts by will.--Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a).

§ 8616. Rights and duties at death.

(a) Donees and relatives.--The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he shall, subject to the terms of the gift, authorize embalming and the use of the body in funeral services if the surviving spouse or next of kin as determined in section 8611(b) (relating to persons who may execute anatomical gift) requests embalming and use of the body for funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

(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 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 liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) Law on autopsies applicable.--The provisions of this subchapter are subject to the laws of this Commonwealth prescribing powers and duties with respect to autopsies.

§ 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.

(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 Organ Donation Awareness Trust Fund) shall, within six months of the effective date of this chapter, do all of the following:

(i) Establish guidelines regarding efficient procedures facilitating the delivery of anatomical gift donations from receiving hospitals to procurement 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.

(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).

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

(i) The Department of Health shall select to carry out the review the Commonwealth-licensed organ procurement organization designated by the Health Care Financing Administration 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), 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.

(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 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).

§ 8618. Voluntary contribution system.

(a) Voluntary designation.--The Department of Revenue shall provide a space on the face of the State individual income tax return form for the 1997 tax year and 2000 tax year whereby an individual may voluntarily designate a contribution of any amount desired to the fund established in section 8622 (relating to Organ Donation Awareness Trust Fund).

(b) Deduction from refund.--The amount so designated by an individual on the State individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) Transfer of funds.--The Department of Revenue shall annually determine the total amount designated pursuant to this section and shall report that amount to the State Treasurer who shall transfer that amount to the fund.

(d) Form instructions.--The Department of Revenue shall, in all taxable years following the effective date of this chapter, provide on its forms or in its instructions which accompany State individual income tax return forms adequate information concerning the Organ Donor Awareness Trust Fund which shall include the listing of an address, furnished to it by the advisory committee, to which contributions may be sent by those taxpayers wishing to contribute to the fund but who do not receive refunds.

(e) Applicability.--This section shall apply to taxable years beginning on or after January 1, 1995.

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

Beginning as soon as practicable, but no later than January 1, 1995, or one year following the effective date of this section, whichever is later, 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:

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.

§ 8620. Police and emergency personnel responsibilities.

Police and emergency personnel responding to the scene of an accident or trauma shall take reasonable steps to insure that the driver's license or personal identification card, donor card or other document of gift and medical alert bracelet, if any, of the individual involved in the accident or trauma accompanies the individual to the hospital or other health care facility. The hospital or other health care facility shall, within five days, if practicable, return the driver's license or identification card to the Department of Transportation, accompanied by a form prescribed by the Department of Transportation, if the individual involved in the accident is deceased.

§ 8621. Organ Donation Awareness Trust Fund contributions.

Beginning as soon as practicable, but no later than January 1, 1995, 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 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 Organ Donation Awareness Trust Fund). 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 Organ Donation Awareness Trust Fund.

§ 8622. Organ Donation Awareness Trust Fund.

(a) Establishment.--All contributions received by the Department of Transportation under section 8621 (relating to Organ 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(f) (relating to requests for anatomical gifts) shall be deposited into a special fund in the State Treasury to be known as the Organ 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 created in subsection (c). Any remaining funds are appropriated subject to the approval of the Governor for the following purposes:

(1) 10% 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. 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% 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% may be expended by the Department of Health, in cooperation with certified organ procurement organizations, for the 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 and when completing a State individual income tax return form.

(4) 25% 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.

(d) Reports.--The Department of Health 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.

(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.

§ 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.

§ 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.

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 9. Upon availability of funding established under 20 Pa.C.S. § 8622(b)(3), the Department of Education, in cooperation with the Department of Health and organ procurement organizations, shall establish a program that can be used for secondary education purposes, which shall include:

(1) Information about State law relating to anatomical gifts, including how to become an organ donor.

(2) General information about organ transplantation in the United States.

Section 10. This act shall apply as follows:

(1) The amendment of 20 Pa.C.S. §§ 2101, 3101(a), 3102, 3121 and 3531 shall apply to the estates of decedents dying on or after the effective date of this act.

(2) The amendment of 20 Pa.C.S. § 2502(2) shall apply to wills executed on or after the effective date of this act.

(3) The amendment or addition of 20 Pa.C.S. §§ 2517, 2521, 3701, 6110, 6117 and 7183 shall apply to wills executed, trusts created and conveyances made before, on or after the effective date of this act.

(4) The amendment of 20 Pa.C.S. § 6111.2 shall apply to beneficiary designations made before, on or after the effective date of this act.

(5) The amendment of 20 Pa.C.S. § 6201 shall apply to joint tenancies with a right of survivorship created before, on or after the effective date of this act.

(6) The remainder of this act shall apply beginning with

the effective date of this act.

Section 11. This act shall take effect as follows:

- (1) The amendment, addition or repeal of 20 Pa.C.S. §§ 5404(b), 5602(a), 5603 and Ch. 86 shall take effect in 90 days.
- (2) Section 9 of this act shall take effect in 90 days.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED--The 1st day of December, A. D. 1994.

ROBERT P. CASEY