

SESSION OF 2007

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2010**

As Amended by Senate Committee on  
Judiciary

**Brief\***

HB 2010 would enact the Revised Uniform Anatomical Gift Act (RUAGA) to replace the Kansas Uniform Anatomical Gift Act of 1968, enacted in 1969. The major provisions of the RUAGA are as follows.

**Definitions**

The bill would provide a number of new definitions that are used in the substantive provisions of the Act to clarify and expand the opportunities for anatomical gifts. These include: adult, agent, custodian, disinterested witness, donee, donor registry, driver's license, eye bank, guardian, know, license, minor, organ procurement organization, parent, prospective donor, reasonably available, recipient, record, sign, tissue, tissue bank, and transplant hospital. (See Section 2).

**Donor Authorization**

The bill would authorize individuals to make anatomical gifts of their bodies or parts. It also would permit certain persons, other than donors, to make an anatomical gift on behalf of a donor during the donor's lifetime. The expanded list includes agents acting under a health-care power of attorney or other record, parents of unemancipated minors, and guardians. The bill also would recognize that it is appropriate that minors who can apply for a driver's license be empowered to make

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

anatomical gifts, but either parent can revoke the gift if the minor dies under the age of 18. (See Sections 4 and 8(g).)

### **Evidencing a Gift**

The bill would recognize that, since the adoption of the previous versions of this Act, some states and many private organizations have created donor registries for the purpose of making anatomical gifts. Thus, in addition to evidencing a gift on a donor card or driver's license, this bill would allow for the making of anatomical gifts on donor registries. It also would permit gifts to be made on state-issued non-driver identification cards and, under limited circumstances, to be made orally. Except for oral gifts, there is no witnessing requirement to make an anatomical gift. (See Section 5.)

### **Amendments or Revocations**

The bill would permit anatomical gifts to be amended or revoked by the making of a later-executed record or by inconsistent documents of gifts. The bill also would permit revocation by destruction of a document of gift and, under limited circumstances, permit oral revocations. (See Sections 6, 8, and 4.)

### **Refusal to Make a Gift**

The bill would permit an individual to sign a refusal that bars all other persons from making an anatomical gift of the individual's body or parts. A refusal generally can be made by a signed record, a will, or, under limited circumstances, orally. By permitting refusals, the bill would recognize the autonomy interest of an individual either to be or not to be a donor. The bill also would recognize that a refusal can be revoked. (See Section 7.)

## **Strengthening Factors**

The bill would substantially strengthen the respect due a decision to make an anatomical gift. The bill would intentionally disempower families from making or revoking anatomical gifts in contravention of a donor's wishes. Under the strengthened language of the bill, if a donor had made an anatomical gift, there is no reason to seek consent from the donor's family as they have no right to give it legally. The bill would not bar a procurement organization from advising the donor's family of the donor's express wishes. The bill also would recognize that some decisions of a donor are inherently ambiguous, making it appropriate to adopt rules. (See Section 8.)

## **Prioritization of Individuals to Make Gifts of a Decedent**

The bill would provide a prioritized list of classes of persons who can make an anatomical gift of a decedent's body or parts if the decedent was neither a donor nor had signed a refusal. The bill would include persons acting as agents at the decedent's death, adult grandchildren, and close friends. (See Section 9.)

## **Manner of Making, Amending, or Revoking An Anatomical Gift of a Decedent**

The bill would deal with the manner of making, amending, or revoking an anatomical gift following the decedent's death. (See Section 10.)

## **Recipients of Anatomical Gifts**

The bill would deal with the passing of parts to named persons and more generally to eye banks, tissue banks, and organ procurement organizations. The bill would provide for harmonizing with federal law, particularly with respect to organs

donated for transplantation or therapy. The bill would include two important improvements to previous versions of the Act. First, the bill would create a priority for transplantation or therapy over research or education when an anatomical gift is made for all four purposes in a document of gift that fails to establish a priority. Second, the bill would allow for the specification of a person to whom a part passes when the document of gift merely expresses a “general intent” to be an “organ donor.” This type of general designation is common on a driver’s license. The bill also would provide for a general statement of intent to be a donor which results only in an anatomical gift of the donor’s eyes, tissues, and organs (not the whole body) for transplantation or therapy.

The bill would provide that, if an anatomical gift of the decedent’s body or parts does not pass to a named person designated in a document of gift, it passes to a procurement organization typically for transplantation or therapy and possibly for research or education.

The bill would prohibit a person from accepting an anatomical gift if the person knows that the gift was not validly made.

Lastly, the bill would clarify that nothing in the bill would affect the allocation of organs for transplantation or therapy except to the extent there has been a gift to a named recipient. (See Section 11.)

### **Hospital Requirements**

The bill would be in accord with controlling federal law when applicable. The federal rules require hospitals to notify an organ procurement organization or third party designated by the organ procurement organization of an individual whose death is imminent or who has died in the hospital to increase donation opportunity and, thus, transplantation. (See Sections 14 and 15.)

## **New Crimes**

The bill would create a new crime of purchasing or selling body parts. It would impose a criminal penalty of a severity level 5, nonperson felony for a person who knowingly purchases or sells an anatomical part for transplantation or therapy if removal of a part is intended to occur after the individual's death. (See Section 16.)

The bill would create a new crime of intentionally falsifying, forging, concealing, defacing, or obliterating a document of gift, an amendment or revocation of a document of gift, or a refusal in order to obtain financial gain. This new crime would be a severity level 10, nonperson felony. (See Section 17.)

## **Liability and Immunity**

The bill would provide immunity for "good faith" efforts to comply with the bill. Further, the bill would provide that in determining whether an individual has a right to make an anatomical gift under Section 9, a person, such as an organ procurement organization, may rely on the individual's representation regarding the individual's relationship to the donor or prospective donor. (See Section 18.)

## **Valid Execution**

The bill would set forth rules relating to the validity of documents of gift executed outside of the state while providing that any document of gift shall be interpreted in accordance with the laws of the state. (See Section 19.)

## **Coroner Duties**

The bill would represent a complete revision of the relationship of the coroner to the anatomical gift process. These provisions are designed to encourage meaningful

cooperation to increase the number of anatomical gifts. (See Sections 22 and 23.)

## **Background**

HB 2010 is a recommendation of the 2006 Interim Special Committee on Judiciary following a hearing on the topic.

Those conferees in the House Judiciary Committee who expressed support for the bill as introduced included Michelle Clayton, National Conference of Commissioners on Uniform State Laws (NCCUSL); Dean Gail Agrawal, University of Kansas School of Law; and Ron Hein, Midwest Transplant Network and the National Kidney Foundation.

The House Judiciary Committee made amendments regarding the priority provisions in Section 9; changed the criminal level for purchasing or selling body parts to a level 5 nonperson felony from the original level 10; deleted administrative sanctions in Section 12; and other amendments technical in nature.

Those conferees in the Senate Judiciary Committee who expressed support for the bill as amended by the House Committee included Ron Hein, Midwest Transplant Network and the National Kidney Foundation, and Rob Linderer, Midwest Transplant Network. NCCUSL submitted written testimony in support of the bill.

The Senate Judiciary Committee amended the bill to clarify a gift may be evidenced on a non-driver identification card.

The fiscal note on the bill as introduced indicates that the bill has the potential for increased litigation due to the creation of a new felony. The Office of Judicial Administration states that, if increased litigation does result, there would be a fiscal effect on the operations of the court system. It is not possible to predict the number of additional court cases that would result

or how complex and time consuming they would be. Therefore, a precise fiscal effect cannot be determined.

In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. The Department of Revenue is responsible for indicating on driver's licenses and non-driver identification cards if an individual is an organ donor, and the Department states that this bill would have no fiscal effect on its operations.

Because HB 2010 would create two new felonies, passage of the bill could have an effect on the adult prison population. When considered by custody level, the Department of Corrections has been operating at near or excess capacity for medium and maximum custody male inmates. Nearly all of the current available capacity for male inmates is at the minimum custody level. If the bill contributes to an increase in the inmate population sufficient to require additional facility capacity, one-time construction and equipment costs would be needed. In addition, annual costs to staff and operate the additional capacity would be required.

If the bill does not contribute to the need for capacity expansion, additional annual costs of approximately \$2,000 per inmate for basic support, including food service, would be needed. Additional expenditures for health care also could be incurred, if the increase in the inmate population required adjustments in the medical contract. The health care contract provides that whenever the inmate count at a facility changes by more than a specified percentage, an adjustment in contract payments is made. The amount of any adjustment would depend on the specific facility involved. Any fiscal effect resulting from this bill has not been included in *The FY 2008 Governor's Budget Report*. A request for information was sent to the Kansas Sentencing Commission, and a response has not yet been received from the agency.