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AB-1689 The revised Uniform Anatomical Gift Act. (2007-2008)

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Assembly Bill No. 1689

CHAPTER 629

An act to repeal and add Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code, and to amend Sections 12811 and 13005 of the Vehicle Code, relating to anatomical gifts.

[Approved by Governor October 13, 2007. Filed with Secretary of State October 13, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1689, Lieber. The revised Uniform Anatomical Gift Act.

Existing law, the Uniform Anatomical Gift Act, regulates the making of anatomical gifts and the disposition of donated bodies and body parts.

This bill would repeal those provisions, would recast and reenact the revised provisions as the Uniform Anatomical Gift Act, and would make conforming changes. By increasing the duties of local officers, including, but not limited to, the coroner, and by changing the definition of related crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code is repealed.

SEC. 2. Chapter 3.5 (commencing with Section 7150) is added to Part 1 of Division 7 of the Health and Safety Code, to read:

CHAPTER 3.5. Uniform Anatomical Gift Act

7150. This chapter shall be known, and may be cited, as the Uniform Anatomical Gift Act.

7150.10. (a) As used in this chapter, the following terms have the following meanings:

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

(2) "Agent" means an individual who meets either of the following criteria:

(A) He or she is authorized to make health care decisions on the principal's behalf by a power of attorney for health care.

(B) He or she is expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

(5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 7150.50.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement recorded on the Donate Life California Organ and Tissue Donor Registry or other donor registry.

(6.5) "Domestic partner" means a person who is registered under Section 297 of the Family Code, or otherwise recognized under the law of any state as a domestic partner.

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

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts, including, but not limited to, the Donate Life California Organ and Tissue Donor Registry.

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

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the Department of Motor Vehicles.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is under 18 years of age.

(16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

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

(22) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) "Reasonably available" means able to be contacted by a procurement organization, without undue effort, and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) "Recipient" means an individual into whose body a decedent's part has been, or is intended to be, transplanted.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Refusal" means a record created under Section 7150.30 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(27) "Sign" means, to do either of the following with the present intent to authenticate or adopt a record:

(A) Execute or adopt a tangible symbol.

(B) Attach to or logically associate with the record an electronic symbol, sound, or process.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood, unless a blood sample is needed for the purpose of research or education.

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

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

(b) This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

7150.15. Subject to Section 7150.35, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 7150.20 by any of the following individuals:

(a) The donor, if the donor is an adult or if the donor is a minor and is either of the following:

(1) An emancipated minor.

(2) Between 15 and 18 years of age, only upon the written consent of a parent or guardian.

(b) An agent of the donor, provided that the power of attorney for health care or other record expressly permits the agent to make an anatomical gift.

7150.20. (a) A donor may make an anatomical gift through any of the following:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card and included on a donor database registry.

(2) Directly through the Donate Life California Organ and Tissue Donor Registry Internet Web site.

(3) In a will.

(4) During a terminal illness or injury of the donor, by any form of communication that clearly expresses the donor's wish, addressed to at least two adults, at least one of whom is a disinterested witness. The witnesses shall memorialize this communication in a writing and sign and date the writing.

(5) As provided in subdivision (b).

(b) A donor or other person authorized to make an anatomical gift under Section 7150.15 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol, indicating that the donor has made an anatomical gift, be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall comply with all of the following:

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

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

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

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

(e) Notwithstanding subdivision (i) of Section 7150.65, a document of gift may designate a particular physician to carry out the recovery procedures. In the absence of this designation, or if the designee is not reasonably available or is deemed by the organ procurement organization not to be qualified to perform the required procedure, the organ procurement organization may authorize another physician or technician to carry out the recovery.

7150.25. (a) Subject to Section 7150.35, a donor or other person authorized to make an anatomical gift under Section 7150.15 may amend or revoke an anatomical gift by either of the following:

(1) A record signed by any of the following and recorded in a donor registry database:

(A) The donor.

(B) The other person.

(C) Subject to subdivision (b), another individual acting at the direction of the donor or of the other person, if the donor or other person is physically unable to sign.

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

(b) A record signed pursuant to subparagraph (C) of paragraph (1) of subdivision (a) shall comply with all of the following:

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

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

(c) Subject to Section 7150.35, a donor or other person authorized to make an anatomical gift under Section 7150.15 may revoke an anatomical gift by the destruction of the document of gift or cancellation of the document of gift on a donor database registry, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

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

witness. The witnesses shall memorialize this communication in a writing and sign and date the writing.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subdivision (a).

7150.30. (a) An individual may refuse to make an anatomical gift of the individual's body or part by any of the following:

(1) A record signed by either of the following:

(A) The individual.

(B) Subject to subdivision (b), another individual acting at the direction of the individual if the individual is physically unable to sign.

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

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness. The witnesses shall memorialize this communication in a writing and sign and date the writing.

(b) A record signed pursuant to subparagraph (B) of paragraph (1) of subdivision (a) shall comply with both of the following:

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

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

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

(1) In the manner provided in subdivision (a) for making a refusal.

(2) By subsequently making an anatomical gift pursuant to Section 7150.20 that is inconsistent with the refusal.

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

(d) Except as otherwise provided in subdivision (h) of Section 7150.35, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

(e) Notwithstanding any provision to the contrary, including, but not limited to, Section 7150.40, only an individual shall make an anatomical gift of all or part of that individual's body or pacemaker, if it is made known that the individual, at the time of death, was a member of a religion, church, sect, or denomination that relies solely upon prayer for healing of disease or that has religious tenets that would be violated by the disposition of the human body or parts or pacemakers for the purposes of transplantation, therapy, research, or education.

7150.35. (a) Except as otherwise provided in subdivision (g) and subject to subdivision (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 7150.20 or an amendment to an anatomical gift of the donor's body or part under Section 7150.25.

(b) A donor's revocation of an anatomical gift of the donor's body or part under Section 7150.25 is not a refusal and does not bar another person specified in Section 7150.15 or 7150.40 from making an anatomical gift of the donor's body or part under Section 7150.20 or 7150.45.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 7150.20 or an amendment to an anatomical gift of the donor's body or part under Section 7150.25, another person may not make, amend, or revoke the gift of the donor's body or part under Section 7150.45.

(d) A revocation of an anatomical gift of a donor's body or part under Section 7150.25 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section

7150.20 or 7150.45.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 7150.15, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 7150.15, an anatomical gift of a part for one or more of the purposes set forth in Section 7150.15 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 7150.20 or 7150.45.

(g) Notwithstanding subdivision (a), an individual who is between 15 and 18 years of age may make an anatomical gift for any purpose authorized in this chapter, may limit an anatomical gift to one or more of those purposes, may refuse to make an anatomical gift, or may amend or revoke an anatomical gift, only upon the written consent of the parent or guardian. If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

7150.40. (a) Subject to subdivisions (b) and (c), and unless barred by Section 7150.30 or 7150.35, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the following order of priority:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under subdivision (b) of Section 7150.15 immediately before the decedent's death.

(2) The spouse or domestic partner of the decedent.

(3) Adult children of the decedent.

(4) Parents of the decedent.

(5) Adult siblings of the decedent.

(6) Adult grandchildren of the decedent.

(7) Grandparents of the decedent.

(8) An adult who exhibited special care and concern for the decedent during the decedent's lifetime.

(9) The persons who were acting as the guardians or conservators of the person of the decedent at the time of death.

(10) (A) Any other person having the authority to dispose of the decedent's body, including, but not limited to, a coroner, medical examiner, or hospital administrator, provided that reasonable effort has been made to locate and inform persons listed in paragraphs (1) to (9), inclusive, of their option to make, or object to making, an anatomical gift.

(B) Except in the case where the useful life of the part does not permit, a reasonable effort shall be deemed to have been made when a search for the persons has been underway for at least 12 hours. The search shall include a check of local police missing persons records, examination of personal effects, and the questioning of any persons visiting the decedent before his or her death or in the hospital, accompanying the decedent's body, or reporting the death, in order to obtain information that might lead to the location of any persons listed.

(b) If there is more than one member of a class listed in paragraph (1), (3), (4), (5), (6), (7), or (9) of subdivision (a) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 7150.50 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

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

7150.45. (a) A person authorized to make an anatomical gift under Section 7150.40 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subdivision (c), an anatomical gift by a person authorized under Section 7150.40 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under Section 7150.40 may be amended or revoked as follows:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift.

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

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

7150.50. (a) An anatomical gift may be made to any of the following persons named in the document of gift:

(1) A hospital, accredited medical school, dental school, college, university, or organ procurement organization, for research or education.

(2) Subject to subdivision (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part.

(3) An eye bank, or tissue bank.

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

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

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

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

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

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

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

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subdivision (a) and does not identify the purpose of the gift, the gift shall be used only for transplantation or therapy, and the gift passes in accordance with subdivision (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used for transplantation, therapy, research, or education, and the gift passes in accordance with subdivision (g).

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

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

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

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

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

(i) If an anatomical gift does not pass pursuant to subdivisions (a) to (h), inclusive, or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person shall not accept an anatomical gift if the person knows that the gift was not effectively made under Section 7150.20 or 7150.45 or if the person knows that the decedent made a refusal under Section 7150.30 that was not revoked. For purposes of this subdivision, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

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

7150.55. (a) All of the following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

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

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

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by paragraph (1) of subdivision (a) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

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

7150.60. (a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 7150.50.

7150.65. (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Donate Life California Organ and Tissue Donor Registry and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization shall be allowed reasonable access to information in the records of the Donate Life California Organ and Tissue Donor Registry to ascertain whether an individual who is at or near death is a donor. Personally identifiable information on a donor registry about a donor shall not be used or disclosed without the express consent of the donor or the person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift. A procurement organization shall not sell the information obtained from the donor registry. A procurement organization shall also comply with all state and federal laws with respect to the protection of a donor's or prospective donor's personally identifiable information.

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

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 7150.50 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

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

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subdivision (a), a procurement organization shall make a reasonable search for any person listed in Section 7150.40 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subdivision (i) of Section 7150.50, and Section 7151.20, the rights of the person to which a part passes under Section 7150.50 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 7150.50, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Except as provided in subdivision (e) of Section 7150.20, neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

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

7150.70. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

7150.75. (a) Except as otherwise provided in subdivision (b), a person that, for valuable consideration, knowingly purchases or sells a part for transplantation or therapy, if removal of a part from an individual is intended to occur after the individual's death, is guilty of a felony and is subject to a fine not exceeding fifty thousand dollars (\$50,000), or imprisonment not exceeding five years, or both the fine and imprisonment.

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

7150.80. (a) A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action or criminal prosecution.

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

(c) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in paragraphs (2) to (8), inclusive, of subdivision (a) of Section 7150.40 relating to the individual's relationship to the donor or prospective donor, unless the person knows that the representation is untrue.

7150.85. (a) A document of gift is valid if executed in accordance with any of the following:

(1) This chapter.

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

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

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

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

7150.90. (a) The California organ procurement organizations designated pursuant to Section 273 and following Title 42 of the United States Code, are hereby authorized to establish a not-for-profit entity that shall be designated the California Organ and Tissue Donor Registrar, which shall establish and maintain the California Organ and Tissue Donor Registry, to be known as the Donate Life California Organ and Tissue Donor Registry. The registry shall contain information regarding persons who have identified themselves as organ and tissue donors upon their death. The registrar shall be responsible for developing methods to increase the number of donors who enroll in the registry.

(b) The registrar shall make available to the federally designated organ procurement organizations (OPOs) in California and the state licensed tissue and eye banks information contained in the registry regarding potential donors on a 24-hour-a-day, seven-day-a-week basis. This information shall be used to expedite a match between identified organ and tissue donors and potential recipients.

(c) The registrar may receive voluntary contributions to support the registry and its activities.

(d) The registrar shall submit an annual written report to the State Public Health Officer and the Legislature that includes all of the following:

(1) The number of donors on the registry.

(2) The changes in the number of donors on the registry.

(3) The general characteristics of donors as may be determined by information provided on the donor registry forms pursuant to Sections 12811 and 13005 of the Vehicle Code.

7151.10. (a) As used in this section the following terms have the following meanings:

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

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

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

(b) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none, or the agent is not reasonably available, another person authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict shall be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 7150.40. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part shall not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

7151.15. (a) A county coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(b) If a county coroner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner and a post mortem examination is going to be performed, unless the coroner denies recovery in accordance with Section 7151.20, the coroner or designee shall conduct a post mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c) A part shall not be removed from the body of a decedent under the jurisdiction of a coroner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner shall not be delivered to a person for research or education

unless the body is the subject of an anatomical gift. This subdivision does not preclude a coroner from performing the medico legal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

7151.20. (a) On request from a qualified procurement organization, the county coroner may permit the removal of organs that constitute an anatomical gift from a decedent who died under circumstances requiring an inquest by the coroner.

(b) If no autopsy is required, the organs to be removed may be released to the qualified procurement organization.

(c) If an autopsy is required and the county coroner determines that the removal of the organs will not interfere with the subsequent course of an investigation or autopsy, the organs may be released for removal. The autopsy shall be performed following the removal of the organs.

(d) If a county coroner is considering withholding one or more organs of a potential donor for any reason, the county coroner, or his or her designee, upon request from a qualified organ procurement organization, shall be present during the procedure to remove the organs. The county coroner, or his or her designee, may request a biopsy of those organs or deny removal of the organs if necessary. If the county coroner, or his or her designee, denies removal of the organs, the county coroner may do any of the following:

(1) In the investigative report, explain in writing the reasons for the denial.

(2) Provide the explanation to the qualified organ procurement organization.

(e) If the county coroner, or his or her designee, is present during the removal of the organs, the qualified procurement organization requesting the removal of the organ shall reimburse the county of the coroner, or his or her designee, for the actual costs incurred in performing the duty specified in subdivision (d), if reimbursement is requested by the county coroner. The payment shall be applied to the additional costs incurred by the county coroner's office in performing the duty specified in subdivision (d).

(f) The health care professional removing organs from a decedent who died under circumstances requiring an inquest shall file with the county coroner a report detailing the condition of the organs removed and their relationship, if any, to the cause of death.

7151.25. In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

7151.30. This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001 et seq.), but does not modify, limit or supersede Section 101(a) of that act (15 U.S.C. Sec. 7001), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

7151.35. (a) No hospital, physician and surgeon, procurement organization, or other person shall determine the ultimate recipient of an anatomical gift based upon a potential recipient's physical or mental disability, except to the extent that the physical or mental disability has been found by a physician and surgeon, following a case-by-case evaluation of the potential recipient, to be medically significant to the provision of the anatomical gift.

(b) Subdivision (a) shall apply to each part of the organ transplant process. The organ transplant process includes, but is not limited to, all of the following:

(1) The referral from a primary care provider to a specialist.

(2) The referral from a specialist to a transplant center.

(3) The evaluation of the patient for the transplant by the transplant center.

(4) The consideration of the patient for placement on the official waiting list.

(c) A person with a physical or mental disability shall not be required to demonstrate postoperative independent living abilities in order to have access to a transplant if there is evidence that the person will have sufficient, compensatory support and assistance.

(d) The court shall accord priority on its calendar and handle expeditiously any action brought to seek any remedy authorized by law for purposes of enforcing compliance with this section.

(e) This section shall not be deemed to require referrals or recommendations for, or the performance of, medically inappropriate organ transplants.

(f) As used in this section "disabilities" has the same meaning as used in the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq., P.L. 101-336).

7151.40. (a) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician and surgeon.

(b) Following the final disposition of the remains of the donor, upon request of a person specified in Section 7100, the donee shall return the cremated remains of the donor at no cost to the person specified in Section 7100, unless the donor has previously designated otherwise in the document of gift. A person who knowingly returns the cremated remains of a person other than the donor to a person specified in Section 7100 shall be punished by imprisonment in the county jail for not more than one year.

(c) Residual anatomical materials and human remains donated to hospitals, organ procurement organizations, accredited medical schools, dental schools, colleges, or universities for educational, research, transplantation, or therapeutic use that are no longer useful or needed for those purposes, may be disposed of by those entities through cremation, in the same manner as medical waste, and without additional burial permit requirements if the donor has specifically waived subdivision (b) of Section 7151.40.

SEC. 3. Section 12811 of the Vehicle Code is amended to read:

12811. (a) (1) (A) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

(B) Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

(C) The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words "provisional until age 18."

(b) (1) The front of an application for an original or renewal of a driver's license or identification card shall contain a space for an applicant to give his or her consent to be an organ and tissue donor upon death. An applicant who gives consent shall be directed to read a statement on the back of the application that shall contain the following statement:

"If you marked on the front of the application that you want to be an organ and tissue donor upon death, your consent shall serve as a legally binding document as outlined under the California Uniform Anatomical Gift Act. Except in the case where the donor is under the age of 18, the donation does not require the consent of any other person. For donors under the age of 18, the legal guardian of the donor shall make the final decision regarding the donation. If you want to change your decision to consent in the future, or if you want to limit the donation to specific organs, tissues, or research, you must contact Donate Life California by mail at 1760 Creekside Oaks Drive, #220, Sacramento, CA 95833, or online at www.donateLIFeCalifornia.org, or www.doneVIDAcalifornia.org."

(2) Notwithstanding any other provision of law, a person under age 18 may register as a donor. However, the legal guardian of that person shall make the final decision regarding the donation.

(3) The department shall collect donor designation information on all applications for an original or renewal driver's license or identification card.

(4) The department shall print the word "DONOR" or another appropriate designation on the face of a driver's license or identification card to a person who registered as a donor on a form issued pursuant to this section.

(5) On a weekly basis, the department shall electronically transmit to Donate Life California, a nonprofit organization established and designated as the California Organ and Tissue Donor Registrar pursuant to Section 7150.90 of the Health and Safety Code, all of the following information on every applicant that has indicated his or her willingness to participate in the organ donation program:

(A) His or her true full name.

(B) His or her residence or mailing address.

(C) His or her date of birth.

(D) His or her California driver's license number or identification card number.

(6) (A) A person who applies for an original or renewal driver's license or identification card may designate a voluntary contribution of two dollars (\$2) for the purpose of promoting and supporting organ and tissue donation. This contribution shall be collected by the department, and treated as a voluntary contribution to Donate Life California and not as a fee for the issuance of a driver's license or identification card.

(B) The department may use the donations collected pursuant to this paragraph to cover its actual administrative costs incurred pursuant to paragraphs (3) to (5), inclusive. The department shall deposit all revenue derived pursuant to this paragraph and remaining after the department's deduction for administrative costs in the Donate Life California Trust Subaccount, that is hereby created in the Motor Vehicle Account in the State Transportation Fund. Notwithstanding Section 13340 of the Government Code, all revenue in this subaccount is continuously appropriated, without regard to fiscal years, to the Controller for allocation to Donate Life California and shall be expended for the purpose of increasing participation in organ donation programs.

(7) The enrollment form shall be posted on the Internet Web sites for the department and the California Health and Human Services Agency.

(8) The enrollment shall constitute a legal document pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall remain binding after the donor's death despite any express desires of next of kin opposed to the donation. Except as provided in paragraph (2) of subdivision (b), the donation does not require the consent of any other person.

(9) Donate Life California shall ensure that all additions and deletions to the California Organ and Tissue Donor Registry, established pursuant to Section 7150.90 of the Health and Safety Code, shall occur within 30 days of receipt.

(10) Information obtained by Donate Life California for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by Donate Life California.

(c) A public entity or employee shall not be liable for loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(d) A contract shall not be awarded to a nongovernmental entity for the processing of driver's licenses, unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

(e) This section shall become operative on July 1, 2006.

SEC. 4. Section 13005 of the Vehicle Code is amended to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit, as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) (1) Upon issuance of a new identification card, or renewal of an identification card, the department shall provide information on organ and tissue donation, including a standardized form to be filled out by an individual who desires to enroll in the California Organ and Tissue Donor Registry with instructions for mailing the completed form to the California Organ and Tissue Donor Registrar established pursuant to subdivision (a) of Section 7150.90 of the Health and Safety Code.

(2) The enrollment form shall be simple in design and shall be produced by the department, in cooperation with the California Organ and Tissue Donor Registrar, and shall require all of the following information to be supplied by the enrollee:

(A) Date of birth, sex, full name, address, and home telephone number.

(B) Consent for organs or tissues to be donated for transplant after death.

(C) Any limitation of the donation to specific organs or tissues.

(3) The form shall also include a description of the process for having a name removed from the registry, and the process for donating money for the benefit of the registry.

(4) The registry enrollment form shall be posted on the Web sites for the department and the California Health and Human Services Agency.

(5) The form shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(6) The registrar shall ensure that all additions and deletions to the registry shall occur within 30 days of receipt.

(7) Information obtained by the registrar for the purposes of this subdivision shall be used for these purposes only and shall not further be disseminated by the registrar.

(c) No contract may be let to any nongovernmental entity for the processing of identification cards unless the department receives two or more qualified bids from independent, responsible bidders.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.