GIVING LIFE AFTER DEATH: THE 2006 REVISION OF THE UNIFORM ANATOMICAL GIFT ACT

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I. INTRODUCTION

While reading this Note, at least one person will die waiting for a lifesaving organ donation to become available.1 Today, over 97,000 Americans are waiting for an organ transplant.2 Unfortunately, that wait is too long for the twenty-four people that die every day because there simply are not enough registered donors to meet the constantly growing need.3

1. REVIS ED U NIF. A NATOMICAL G IFT A CT prefatory note (2006) (“Every hour another person in the United States dies because of the lack of an organ to provide a lifesaving organ transplant.”).
Without an increase in donors, the number of daily deaths from organ failure will undoubtedly continue to increase with the population.

These harsh statistics are not meant to overshadow the success of organ transplants in recent decades or the continual advances in medical science. Since the first successful transplant, organ transplants have saved or helped to drastically improve the lives of over 300,000 Americans. Still, the simple problem remains that not enough people register to be organ donors. One could blame the complexity of the laws concerning organ donation and procurement, the lack of knowledge or education regarding donation, or simply apathy.

To illustrate, in 2005 there were 13,091 Americans that died under the age of 70 who had the cardiac and brain death criteria to be eligible for organ donation. Unfortunately, only 7,593 of these individuals actually donated their organs. At that time, there were about 90,000 Americans waiting for organs. Sadly, another study shows that 5,498 people died in 2005 that were potential donors and could have provided up to 17,000 organs.

Regardless of the cause of the shortage, the reality is that without an increase in organ donors, the number of Americans who die waiting for an organ will continue to steadily increase. Because the only solution for meeting the increasing need for organ donation is recruiting and registering more organ donors, the National Conference of Commissioners on Uniform State Laws (NCCUSL) recently revised its former versions of the Uniform Anatomical Gift Act (UAGA). This revision was introduced to the General Assembly of Iowa in March 2007, passed unanimously in both houses, and signed into law by Governor Culver in April.

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5. REVISED UNIF. ANATOMICAL GIFT ACT at prefatory note.
6. Id.
7. Id.
8. Id. (noting that the numbers are to some extent estimates and that the Institute of Medicine estimates that donor-eligible deaths range between 10,500 and 16,800 per year).
9. Id. (“It is estimated that approximately 5,000 individuals join the waiting list each year.”) (citation omitted).
10. Id. (“Every hour another person in the United States dies because of the lack of an organ to provide a lifesaving organ transplant.”).
11. 2007 Iowa Acts ch. 44 (codified at IOWA CODE § 142C (2007)).
The new UAGA 2006 revision states that it has three main goals.\textsuperscript{12} The first goal is to encourage the general public to make more anatomical gifts.\textsuperscript{13} The second goal is to strictly honor the wishes of individuals, which includes respecting the right to make or not make anatomical gifts.\textsuperscript{14} The third goal is to preserve the current organ donation system because it requires affirmative intent, or first-person consent, to make an anatomical gift and also strictly prohibits and harshly punishes the sale and purchase of organs.\textsuperscript{15}

The revised UAGA became the law in Iowa on July 1, 2007.\textsuperscript{16} The primary objective of this Note is to give the reader an understanding of the previous Iowa law on anatomical gifts, the interplay of federal law and the compliance issues it presents, and finally, the changes the new revision made to the process of anatomical gift-making in Iowa. Additionally, this Note is intended to explain the vital importance of organ donation and uniform law on organ donations between the states. Without uniform law that complies with and supplements federal law while taking into account changes in technology and medical science, the gap between those who need organs and those donating them will never decrease.

A. Previous Uniform Anatomical Gift Acts

The original UAGA was presented by NCCUSL in 1968 and was quickly passed by Iowa and all other state legislatures.\textsuperscript{17} The act was unanimously enacted in large part due to the first successful transplant of a heart, which occurred in 1967.\textsuperscript{18} The 1968 act’s primary accomplishment was the creation of a statutory right for individuals to voluntarily donate their eyes, tissue, and organs.\textsuperscript{19}

In 1987, NCCUSL revised the original 1968 UAGA to address the changes in technology and circumstances that occurred since the first
uniform act was enacted.\textsuperscript{20} One specific and monumental change in the organ donation process was the development of immunosuppressive drugs that provided transplant recipients with fewer instances of organ rejection.\textsuperscript{21} When these medications came to the forefront of medical technology, the demand for organs increased significantly.\textsuperscript{22} Unfortunately, the 1987 revision was adopted in only twenty-six states, which created significant inconsistencies between states with different versions of the act.\textsuperscript{23}

Iowa adopted both the 1968 original and the 1987 revision.\textsuperscript{24} They were codified in Iowa Code chapter 142C.\textsuperscript{25} The right to donate one’s organs, eyes, and tissue is not explicitly recognized at common law; consequently, clear codification of this right has allowed individuals as well as qualified others to make such a lifesaving gift.\textsuperscript{26}

One reason for the recent interest in revising the UAGA was that states were enacting non-uniform amendments to their respective versions of the uniform act.\textsuperscript{27} In addition, the federal government began to play an ever-increasing role in the regulation of organ donation and transplant issues.\textsuperscript{28} Since the 1987 UAGA revision, federal law has been enacted that changes the roles of medical facilities and donor organizations in their procurement of organs, eyes, and tissue for purposes of transplantation.\textsuperscript{29} Also, because medical technology has advanced extensively in the last twenty years, the need for more donors for research purposes has also increased.\textsuperscript{30} Finally, both the 1968 and 1987 acts were inconsistent with federal law and the overall goal of encouraging more anatomical donations.\textsuperscript{31} All of these reasons suggested that a new version of the

\begin{itemize}
\item \textsuperscript{20} Id. (stating that immunosuppressive drugs “permitted many more successful organ transplants, thus contributing to the rapid growth in the demand for organs and the need for changes in the law to facilitate the making of anatomical gifts”).
\item \textsuperscript{23} Id.
\item \textsuperscript{26} REVISED UNIF. ANATOMICAL GIFT ACT at prefatory note.
\end{itemize}
UAGA was necessary to combat the increasing need for organ donations.

The original UAGA as well as the 1987 and 2006 revisions all promulgate an “opt in” theory as the default rule for making anatomical gifts. In this context, “opt in” essentially means that if an individual wants to be an organ, eye, or tissue donor, that individual, or a qualified person acting on behalf of that individual, is required to make an affirmative donation. A discussion of what is adequate for an affirmative donation appears later in this Note.

The American opt-in requirement is contrary to and the functional opposite of the theory of “presumed consent” that is present in many European countries. In a presumed consent system, an individual is presumed to be an anatomical gift donor unless that individual, or one who is legally acting for that individual, opts out of making an anatomical gift. Although there are strong arguments for implementing such a system in Iowa and this country, they are beyond the scope of this Note.

B. Coverage and Major Areas of Change of the 2006 Revision

Although the 2006 revision of the UAGA retains the basic fundamental opt-in principle, it does contain some significant changes. The opt-in system adopted in the 2006 revision is also known as “first-person consent” and “donor designation.” All three versions of the UAGA mandate a policy that honors an individual’s free choice to donate or abstain from donation. The 2006 version also continues to allow other individuals to gift a loved one’s organs upon death so long as that decedent did not make a contrary gift or indicate refusal to donate during his lifetime.

Although the 2006 revision of the UAGA keeps these underlying policies and goals substantially the same as previous versions, because of the changes in federal law and circumstances in general, many changes also had to be made.

32. Id.
33. Id.
34. See infra Part III.B.
35. UNIF. ANATOMICAL GIFT ACT prefatory note (2006).
36. Id.
37. Id.
38. Id.
39. Id.
40. See generally id. (providing background and rationale for the 2006
One major change in the 2006 revision is the strengthening of the language that prevents individuals, even family, from making a decision against the wishes of a decedent who wanted to make an anatomical gift.41 Additionally, the UAGA revision of 2006 expands the list of individuals who are able to make an anatomical gift for another person during that person’s life and after that person’s death, if that person made no choice while living.42 The new version also allows any minor who is able to obtain a driver’s license under applicable state law to, with some restrictions, make their own choice on whether to be a donor.43

Another important feature of the 2006 version of the UAGA is its establishment of standards for donor registries.44 This was a necessary addition in light of the growing popularity of such registries for the sake of administrative convenience.45 Along with many other states, Iowa has created such a registry to facilitate the organ donation process.46

The 2006 revision of the UAGA also attempts to provide a solution for issues that occur when an individual donating organs (either by his own affirmation or by a statutorily-eligible person) has a healthcare directive that requests life-supporting machines be withheld or withdrawn when such care is necessary for preservation of the organs for transplantation.47 The recent revision also includes expansive rules pertaining to the relationship and cooperation between organ donor organizations, coroners, and medical examiners.48

Finally, the 2006 version of the UAGA allows for recognition of anatomical gifts made under other state laws49 and allows for electronic records and signatures.50 All of the changes made to the 2006 version of the UAGA will be discussed in more detail in Part IV of this Note.

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41. Id.; see also id. § 8.
42. Id. at prefatory note; see also id. § 4.
43. Id. at prefatory note; see also id. § 4.
44. Id. at prefatory note; see also id. § 20.
45. Id. § 20 cmt. (“[A] donor registry can be coordinated to assure a unitary source of donor information.”).
47. REVISED UNIF. ANATOMICAL GIFT ACT at prefatory note, §§ 14, 21.
48. Id. at prefatory note, §§ 22–23.
49. Id. at prefatory note, § 19.
50. Id. § 25.
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C. The Necessity for Swift Enactment

The need for uniformity among the states in the making and procurement of anatomical gifts obviously stems from the time-sensitive nature of medical situations requiring organ transplantation. Without uniform laws, transporting lifesaving organs across state lines would prove difficult in light of the many variations of state law. Donated organs have a very small window of time in which they can be successfully transported to the individual receiving the donation. Because time is of the essence, uniform laws are necessary to alleviate possible transportation failure in life or death situations.

II. FEDERAL ORGAN DONATION LAW

The need for uniform law regarding anatomical gifts also stems from the fact that, as technology and medicine have advanced, federal laws have been passed in response to issues that inevitably come with such radical changes. Additionally, because of the sensitive nature of death and the emotions that come with burying a loved one, federal courts have had to analyze the property issues inherent with dead bodies.

A. Federal Delegation and Prohibition on Sale

Congress required the Secretary of State to create an administrative unit within the Public Health Service to coordinate organ procurement activities, inform the public of the need to donate, provide assistance to organ donor networks, and provide public information regarding transplantations and costs. This information must include details to patients and families about the availability of resources both at the state and federal level. The administrative unit is also required to make the patients and families aware of the costs associated with transplants.

Congress also granted the Secretary the authority to create organ

51. Id. § 26 cmt.
52. Id.
53. Id. at prefatory note.
56. Id. § 274c(4)(ii).
57. Id.
procurement organizations. These organizations have to meet certain qualifications, including being not-for-profit, being fiscally stable and having procedures to make sure it remains so, and being re-certified every four years by the Secretary.

Additionally, Congress made it a felony for a person to sell or acquire by purchase any human organ. One who is found in violation of this prohibition can be fined up to $50,000, imprisoned for up to five years, or both.

B. The Effect of Due Process on Organ Donation

It is no secret that the disposition of a loved one’s body upon death is a very important and sacred part of the mourning process. Therefore, it is not surprising that the families of decedents who have had body parts removed for donation or research without their consent have brought suit claiming that their due process rights have been violated.

The viability of a due process claim in these situations essentially turns on whether one has a property interest in his loved one’s body. Most courts that have decided the issue have found that some kind of property right in a dead body does in fact exist and often refer to it as “quasi-property.”

The court in Brotherton v. Cleveland recognized that the decedent’s wife had a “protected property interest” in her dead husband’s body. The court stated that Ohio law granted property rights in its adopted version of the UAGA and thus could not take those rights away without some due process. In this particular case, due process required receiving the

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58. Id. § 273(a)(1)–(2).
59. Id. § 273(b)(2)(A)–(B), (D).
61. 42 U.S.C. § 274e(b).
63. Brotherton, 923 F.2d at 479.
64. Id. at 480 (citing In re Estate of Moyer, 577 P.2d 108, 110 n.5 (Utah 1978)).
66. Id. at 482.
The court stated that although removal of corneas for donation constituted a governmental interest, this interest was not substantial enough to warrant a conscious disregard of the property rights that had already been granted to family members.

III. PRE-JULY 2006 IOWA ORGAN DONATION LAW

Iowa has enjoyed extensive success in organ transplant and donation, but hundreds of Iowa residents are still awaiting viable donations. New ideas—such as those in the 2006 UAGA revision making organ donation easier and more available—are crucial toward providing sufficient organs to meet Iowa’s growing need.

A. Waiting for Organs in Iowa

The Iowa Donor Network is a non-profit organization that serves Iowa as the primary organizer of all organ, tissue, and eye donation services. As of February 2008, there are 469 Iowa residents waiting for a heart, kidney, liver, lung, or pancreas. There is currently no program in Iowa for heart, lung, or intestine transplants. In 2007, fifty-four organs were donated in Iowa and there were 344 total tissue donors. In 2005, Suzanne Conrad, CEO of the Iowa Donor Network, became a living donor of a kidney to an Ames man who served on the board of the Iowa Donor Network. Despite this success and enthusiasm, there are still many Iowans on organ waiting lists.

67. Cf. id. (stating that review of medical records outlining the plaintiff’s objection to the removal of her deceased husband’s organs would comply with both the state’s UAGA and plaintiff’s due process rights).
68. Id.
71. Id.
B. Pre-July 2006 Organ Donation Law

Prior to July 2007, Iowa’s anatomical gift act was basically NCCUSL’s 1987 revision, although Iowa did not adopt the 1987 version until 1995.74 The law was codified in Iowa Code chapter 142C and was entitled the Uniform Anatomical Gift Act.75 At its most basic level it allowed any competent person who was at least eighteen years of age to make, limit, or refuse to make an anatomical gift.76 It also allowed minors between fourteen and seventeen years old to make, limit, or refuse to make an anatomical gift if they obtained written consent from their legal guardian.77

The old law also required that a document of gift be completed before the anatomical gift was valid.78 A document of gift was defined as a “card signed by an individual donor, a written statement attached to or imprinted or noted on a driver’s license or nonoperator’s identification card, an entry in a donor registry, a donor’s will, or any other written document used by a donor to make an anatomical gift.”79 Delivery of the document of gift during a donor’s lifetime was not required for the gift to be valid.80 If the donation was made by will, the gift was effective on the date the donor died, not the date the will was probated.81 Additionally, if the will was contested and subsequently invalidated, the anatomical gift would have remained valid.82

The old anatomical gift law in Iowa allowed for the amendment and revocation of an anatomical gift through several means.83 The donor could execute a signed statement, orally amend or revoke in the presence of two persons, make any type of communication regarding amendment or revocation to a health professional if the donor had a terminal illness, or create a written statement signed by the donor and delivered to a donee who had previously received a gift document.84 Additionally, a gift made by will could be amended or revoked in any manner appropriate for the

74. 1995 Iowa Acts 46–50 (codified at IOWA CODE ch. 142C (2005)).
76. Id. § 142C.3(1).
77. Id.
78. Id. § 142C.3(2).
79. Id. § 142C.2(4).
80. Id. § 142C.6(1).
81. Id. § 142C.3(5).
82. Id.
83. Id. § 142C.3(6)(a)–(d).
84. Id.
amendment or revocation of wills.85

Upon the death of an individual, any document of gift that had not been revoked became effective and did not necessitate further consent or agreement from a third party.86 No person, including a family member, was authorized to revoke or attempt to undermine a valid document of gift.87 If an individual did not want another person to be able to make a gift on his behalf pursuant to Iowa Code section 142C.4, a written refusal expressing that individual’s refusal would control.88 If an individual wished to make a formal refusal to donate and was terminally ill or injured, an oral refusal to a health care professional would constitute a valid refusal.89

In addition to enumerating the ways that an individual could become an organ donor, the old Iowa law also allowed others to make anatomical gifts of a decedent’s body if they were members of a qualifying class of people and the decedent had not made a refusal.90 Qualifying classes were enumerated in the following preferred order and included: durable power of attorney for health care, spouse, adult child, parent, adult sibling, grandparent, and guardian.91 A qualifying person could not make an anatomical gift if there was an individual available in person or by telephone that was in a higher priority class, or if that qualifying person knew that an individual of a prior class had an objection to the making of an anatomical gift.92 Additionally, an anatomical gift made by a qualifying person could be revoked by another member in the same class or by anyone of a prior class if no removal procedures had begun.93

Although not enumerated in the list of qualifying individuals, old Iowa law provided, under certain circumstances, for the medical examiner the power to make an anatomical gift.94 A medical examiner could allow for the removal of a part of a body if that body was in the medical examiner’s possession for a lawfully authorized purpose, if the identification of the body was unknown, or if the next of kin could not be

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85. Id. § 142C.3(7).
86. Id. § 142C.3(8).
87. Id.
88. Id. § 142C.3(9)–(11).
89. Id. § 142C.3(9).
90. Id. § 142C.4(1).
91. Id. § 142C.4(1)(a)–(g).
92. Id. § 142C.4(2)(a), (c).
93. Id. § 142C.4(4).
94. Id. § 142C.4A.
located. Additionally, a medical examiner could only permit the removal of a part from a body if: a request had first been made by a hospital, doctor, or organ procurement agency; the medical examiner was satisfied that a reasonable effort had been made to inform any individuals qualified to make a donation on the decedent’s behalf; the medical examiner had no knowledge of contrary wishes of the decedent or of a person who would qualify to make a gift on the decedent’s behalf; the medical examiner had no knowledge of the decedent being a member of a religion whose beliefs would be violated by such a gift; the removal would be done by professionals pursuant to acceptable medical standards and would not detrimentally affect an autopsy or investigation; any cosmetic restoration necessary would be done; and the decedent’s death did not affect public interest, such as death caused by a contagious disease.

The previous Iowa law set forth three groups who could receive anatomical gifts. Hospitals, doctors, and procurement organizations could be donees of anatomical gifts so long as they were for purposes of performing transplants, therapy, education, research, or scientific advancement. Additionally, medical and dental schools could receive anatomical gifts for purposes of education, research, and scientific advancement. Finally, a donor could designate an individual to receive an anatomical gift for transplantation or therapy as needed by the individual. Any rights created by a document of gift to a donee took precedent over all other rights except laws governing autopsies.

Currently, to become an organ donor in Iowa one can simply register online with the Iowa Donor Registry. At this website, individuals fill in personal information, including their addresses, email addresses, and birth date. Additionally, the online registration allows individuals to control which organs they wish to donate by unchecking boxes next to the organs they do not wish to donate.

95. Id. § 142C.4A(1).
96. Id. § 142C.4A(1)(a)–(i).
97. Id. § 142C.5(1).
98. Id. § 142C.5(1)(a).
99. Id. § 142C.5(1)(b).
100. Id. § 142C.5(1)(c).
101. Id. § 142C.8(1).
103. Id.
104. Id.
This registration also allows individuals to decide whether to donate their organs and tissues for purposes of transplants, research, or both.\textsuperscript{105} The Iowa Donor Registry also permits individuals to donate an organ directly to someone by entering the donee’s name, address, and phone number into the registry.\textsuperscript{106}

Additionally, the online registry allows for individuals over the age of eighteen to electronically sign in order to activate their donation.\textsuperscript{107} However, individuals who are fourteen to seventeen years old are required to either request that a signature card be sent to them or in the alternative, print one out and send it to the registry.\textsuperscript{108} In either situation, the signature card must include the minor’s parent’s or legal guardian’s signature in addition to the minor’s signature.\textsuperscript{109} Finally, only a parent or legal guardian can make an anatomical donation for a child thirteen years or younger.\textsuperscript{110} A parent or legal guardian may do so by either requesting that a signature card be sent or printing one and sending it in to the Donor Registry.\textsuperscript{111}

Currently, Iowans can also register to be organ donors when they obtain or renew their driver’s licenses.\textsuperscript{112} If an individual consents to organ donation when obtaining a license, that individual has given legal consent for his organs to be donated upon death.\textsuperscript{113} However, this consent is limited to organs for donation purposes and not for research.\textsuperscript{114} If an individual wants to donate his corneas, tissue, or any organs for purposes of medical research, that individual must actually register with the Iowa Donor Registry.\textsuperscript{115}

The Iowa Donor Registry is meant to be a fairly easy, user-friendly, and encompassing method to make sure one’s anatomical gift is protected against subsequent gifts or revocations.

Iowa law relieves liability relating to organ donations and
procurements for qualifying classes of people.\textsuperscript{116} Qualifying persons or entities include hospitals, funeral homes, doctors, medical examiners, and emergency workers.\textsuperscript{117} As long as these individuals or entities comply or attempt to comply with the chapter 142C requirements in good faith, they are immune from any liability resulting from the making or accepting of a gift.\textsuperscript{118} Iowa law also protects qualified individuals (as well as the decedent’s estate) who make anatomical gifts pursuant to chapter 142C from any liability for injury or damages arising from the making or the use of anatomical gift under the same requirement that the gifts were made in good faith.\textsuperscript{119}

IV. NCCUSL’S NEW 2006 ANATOMICAL GIFT ACT AND CHANGES TO IOWA LAW

Iowa enacted the 2006 revision of the UAGA in April 2007.\textsuperscript{120} The new revision made many substantial and important changes to Iowa’s outdated 1987 version of the uniform organ donation law.

The definition section of the new UAGA both changes definitions and adds new definitions to the previous Iowa law.\textsuperscript{121} Several new definitions include: agent, disinterested witness, guardian, prospective donor, reasonably available, record, and refusal.\textsuperscript{122} The new revision changed the definition of “anatomical gift” to include the purposes for which the gift could be used.\textsuperscript{123}

The new revision also greatly expands the classes of people, other than the donor, who can make an anatomical gift on behalf of the donor during the donor’s lifetime.\textsuperscript{124} Again, prior Iowa law allowed any competent person who was eighteen years of age or older, or a minor who

\begin{footnotes}
\footnote{117. Id.}
\footnote{118. Id.}
\footnote{119. Id. § 142C.11(4).}
\footnote{120. 2007 Iowa Acts ch. 44 (codified at IOWA CODE ch. 142C (2007)).}
\footnote{121. Compare IOWA CODE § 142C.2 (2005), with 2007 Iowa Acts ch. 44, § 2 (codified at IOWA CODE § 142C.2 (2007)). See also REVISED UNIF. ANATOMICAL GIFT ACT § 2 (2006).}
\footnote{122. 2007 Iowa Acts ch. 44, § 2 (codified at IOWA CODE § 142C.2 (2007)).}
\footnote{123. Id. § 2(3) (codified at IOWA CODE § 142C.2(3) (2007)) (defining anatomical gift as “a donation of all or part of the human body effective after the donor’s death, for the purposes of transplantation, therapy, research, or education”).}
\footnote{124. Id. § 3 (codified at IOWA CODE § 142C.3(1) (2007)); see also REVISED UNIF. ANATOMICAL GIFT ACT § 4.}
was fourteen to seventeen years old with written consent of the parent or guardian, to make an anatomical gift. The new UAGA revision also allows an emancipated minor or a minor who is eligible under state law to apply for a driver’s license to make an anatomical gift. The new revision also allows an agent of the donor to make a gift during the donor’s lifetime as long as the donor’s power of attorney for health care or another record does not specifically prohibit it. Additionally, under the new UAGA a parent of an unemancipated minor or a donor’s guardian can also make a gift on behalf of a donor before the donor’s death. The new UAGA greatly increases and encourages the making of anatomical donations because of the more expansive list of possible individuals who can make a gift on another’s behalf before that person’s death. This expansion is important because these decisions are easier to make while a donor is alive and not contemplating death.

The UAGA revision also changes the ways by which and by whom an anatomical gift may be amended or revoked. The new revision allows an individual who was authorized to make a gift to amend or revoke that gift pursuant to a signed record. The new revision prevents oral revocations in all circumstances except during a terminal illness or injury when the oral revocation was addressed to at least two adults, one of whom must be disinterested.

Along with strengthening the language in the revocation section, the new UAGA also strengthens the law on complete refusals to make gifts.

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126. 2007 Iowa Acts ch. 44, § 3(1)(a)(2)–(3) (codified at IOWA CODE § 142C.3(1)(a)(2)–(3) (2007)). A parent can, however, revoke or amend a gift made by a deceased minor who is not emancipated. Id. § 3(5)(g) (codified at IOWA CODE § 142C.3(5)(g) (2007)).
127. Id. § 3(1)(b) (codified at IOWA CODE § 142C.3(1)(b) (2007)).
128. Id. § 3(1)(c)–(d) (codified at IOWA CODE § 142C.3(1)(c)–(d) (2007)).
129. Id. § 3(3) (codified at IOWA CODE § 142C.3(3) (2007)); see also REVISED UNIF. ANATOMICAL GIFT ACT § 6.
131. Id. § 3(3)(d) (codified at IOWA CODE § 142C.3(3)(d) (2007)) (displacing Iowa Code sections 142C.3(6)(b)–(c) (2005) that allowed for revocations by “[a]n oral statement made by the donor in the presence of two individuals” and by “[a]ny form of communication during a terminal illness or injury addressed to a health care professional . . . .”).
132. Id. § 3(4) (codified at IOWA CODE § 142C.3(4) (2007)); see also REVISED UNIF. ANATOMICAL GIFT ACT § 7.
Prior Iowa law effectively permitted refusals to be made by completion of any written document of refusal, or during a terminal illness or injury, by any unwritten communication to a health care professional.\footnote{Iowa Code § 142C.3(9) (2005) (amended 2007).} The new revision treats refusals during terminal illnesses or injuries the same as revocations in similar circumstances; it requires the communication to be made in front of two adults, one being disinterested.\footnote{2007 Iowa Acts ch. 44, § 3(4)(a)(3) (codified at Iowa Code § 142C.3(4)(a)(3) (2007)).}

In order to enable those who might have actually known what a donor would have wanted regarding donation, the new UAGA adds to the list of people who may make an anatomical gift on behalf of a donor after the donor has died.\footnote{Id. § 4(1)(a)–(j) (codified at Iowa Code § 142C.4(1)(a)–(j) (2007)); see also Revised Uniform Anatomical Gift Act § 9.} The list of possible individuals is of course subject to the provisions on revocation and refusal, and cannot be used as a way to avoid those rules.\footnote{2007 Iowa Acts ch. 44, § 4(1) (codified at Iowa Code § 142C.4(1) (2007)) (making this provision subject to sections 142C.3(4) and 142C.3(5)).} The new classes of people include adult grandchildren of the decedent as well as a person who exhibited “special care and concern” for the decedent to make anatomical gifts on behalf of the decedent.\footnote{Id. § 4(1)(f), (h) (codified at Iowa Code § 142C.4(1)(f), (h) (2007)).} These classes of possible individuals available to make a donation on behalf of a decedent were not previously included under Iowa law.\footnote{See Iowa Code § 142C.4(1) (2005).} Because these classes of people are listed in priority, a person from a later class still cannot make a gift if a person from an earlier class is reasonably available; this is true in both the UAGA revision and in prior Iowa law.\footnote{2007 Iowa Acts ch. 44, § 4(1) (codified at Iowa Code § 142C.4(1) (2007)); Iowa Code § 142C.4(1), (2) (2005).} The difference in the UAGA revision is the result of having conflicting opinions within authorized classes.\footnote{2007 Iowa Acts ch. 44, § 4(2) (codified at Iowa Code § 142C.4(2) (2007)).} In Iowa, prior organ donation laws would not allow a qualified person to make a gift on behalf of a decedent if that person knew of an objection by a member of his class or of a prior class.\footnote{Iowa Code § 142C.4(2)(c) (2005).} The new revision encourages more donation by not completely barring a donation in those situations in which class members conflict with another.\footnote{2007 Iowa Acts ch. 44, § 4(2)(a) (codified at Iowa Code § 142C.4(2)(a) (2007)).} Instead of requiring complete unanimity, the new
UAGA only requires that a majority of the members of a class that are “reasonably available” agree on the proposed donation.143 However, still consistent with prior Iowa law, the new UAGA does not allow a gift to be made by a member of a lower class if a member of a higher class is reasonably available to make or object to such a donation.144

Another change in the 2006 UAGA revision relates to appropriate purposes of organ donation. Prior Iowa law made no requirement that gifts be used for certain purposes before others.145 The new UAGA specifically requires that transplantation and therapy take precedent over research and education.146 The new revision, like prior Iowa law, still provides a donor with the opportunity to name an individual recipient so long as the purpose is transplantation or therapy as needed by that individual.147 However, for clarification, the revised UAGA states that when a donor specifies only by general intent that they want to donate—commonly on a driver’s license—his gift is limited to transplantation or therapy and cannot be used for education or research.148

The new 2006 UAGA revision also adds a section requiring the search of individuals that law enforcement officers, firefighters, paramedics, or other emergency personnel reasonably believe to be dead or near death for any documentation of an anatomical gift.149 The revision requires that if the person who conducted the search finds any such records that they send the document to the hospital.150 The failure of an individual to complete these duties does not subject him to criminal liability, but he may be administratively sanctioned.151

143. Id. “Reasonably available” is defined in the revision as “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.” Id. § 2(28) (codified at IOWA CODE § 142C.2(28) (2007)).
144. Id. § 4(2)(b) (codified at IOWA CODE § 142C.4(2)(b) (2007)).
147. 2007 Iowa Acts ch. 44, § 6(1)(c) (codified at IOWA CODE § 142C.5(1)(c) (2007)).
148. Id. § 6(6) (codified at IOWA CODE § 142C.5(6) (2007)).
149. Id. § 7(1) (codified at IOWA CODE § 142C.5A(1) (2007)); see also REVISED UNIF. ANATOMICAL GIFT ACT § 12.
150. 2007 Iowa Acts ch. 44, § 7(2) (codified at IOWA CODE § 142C.5A(2) (2007)).
151. Id. § 7(3) (codified at IOWA CODE § 142C.5A(3) (2007)).
The new revision also attempts to relieve the tension between maintaining the medical suitability of anatomical gifts and the sensitive issues surrounding living wills and other similar life-prolonging measures. The revision of the UAGA supports the process outlined in the Medicare hospital regulations relating to the identification of potential organ donors, notification of the appropriate procurement organization, screening, and other measures necessary to ensure the medical suitability of parts. The provision allows a procurement organization to conduct a reasonable examination of the medical suitability of a possible donation and does not allow the measures necessary to be withdrawn unless the individual had expressed a contrary intent.

Prior Iowa and current federal law, as well as the UAGA revision, prohibit the buying and selling of anatomical body parts. However, the new revision adds another prohibited act designed to punish a person who for financial gain “intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal.” The revision makes this act a felony punishable by a fine, imprisonment, or both.

Another important addition in the revision is a provision on choice of law. This provision encourages validity of documents of gift by creating a presumption that such documents are valid if executed pursuant to the act, to the law where the document was executed, or to the law where the donor was domiciled. If the document is found to be valid based on one of these reasons, then Iowa law would govern the interpretation of the document of gift. This provision will make more documents of gift valid, which promotes the goal of increasing organ donation.

152.  Id. § 10 (codified at IOWA CODE § 142C.8 (2007)); see also REVISED UNIF. ANATOMICAL GIFT ACT § 14(c).
153. 2007 Iowa Acts ch. 44, § 10(3) (codified at IOWA CODE § 142C.8(3) (2007)).
155. 2007 Iowa Acts ch. 44, § 13 (codified at IOWA CODE § 142C.10A (2007)); see also REVISED UNIF. ANATOMICAL GIFT ACT § 17.
156. 2007 Iowa Acts ch. 44, § 13 (codified at IOWA CODE § 142C.10A (2007)).
157. Id. § 15 (codified at IOWA CODE § 142C.12A (2007)); see also REVISED UNIF. ANATOMICAL GIFT ACT § 19.
159. Id. § 15(2) (codified at IOWA CODE § 142C.12A(2) (2007)).
V. WHERE STATES STRAYED FROM UNIFORMITY

Despite the fact that the revision was written as a uniform law, some states slightly modified the revised UAGA. An interesting addition that was made by California was the inclusion of domestic partner in the definition section.\(^{160}\) Arizona included a domestic partner as a person qualified to make an anatomical gift in the section setting forth the class of persons eligible.\(^{161}\) In Arizona, the domestic partner is the appropriate person after the decedent’s parents, but before their adult siblings.\(^{162}\)

Arizona also deleted the section entitled “search and notification.”\(^{163}\) This means that law enforcement officers, firefighters, and paramedics are under no obligation to make a reasonable search for any document of organ donation on a person or his driver’s license.\(^{164}\) This is problematic for the obvious reason that many possible organ donors will simply be overlooked. Colorado also removed the search and notification section, but has at least reserved it.\(^{165}\)

Perhaps some of the most important changes to the revised UAGA were to the section regarding conflicts between advance healthcare directives and the intention to make anatomical gifts as explained in Part I.\(^{166}\) Arkansas, Idaho, and Montana retained the old version of this section and thus do not have solutions to those conflicts.\(^{167}\) Indiana placed a time restriction on solving the issue.\(^{168}\) A hospital can withdraw life support from the potential donor if the organ procurement agency has not made a determination of donor eligibility within six hours of being notified.\(^{169}\)

Finally, Minnesota switched the priority of those who can make a gift

\(^{162}\) Id. § 36-848(A).
\(^{163}\) Arizona did not enact section 12 of the Revised Uniform Anatomical Gift Act.
\(^{164}\) See Revised Unif. Anatomical Gift Act § 12 (requiring a reasonable search for a document of gift).
\(^{166}\) See supra Part I.B.
\(^{169}\) Id.
for someone in the allowable circumstances.\textsuperscript{170} The Minnesota law makes persons acting as guardians a higher priority than an adult who “exhibited special care and concern for the decedent.”\textsuperscript{171}

VI. CONCLUSION

The new revision of the UAGA is obviously a positive step toward the goal of saving lives through organ donation. It is troublesome, however, that the law was not uniformly enacted in every state. Because organ transplants must occur in such a small time frame, any difficulty caused by differences in state law may potentially prevent someone from receiving a lifesaving organ transplant. There are still several states introducing the revised UAGA in their respective legislatures, leaving open the possibility for more non-uniformity. Lawmakers should be cognizant of the importance of uniformity and be very cautious when making even the smallest of changes to the revision. In spite of the potential for piecemeal changes to the revised UAGA by various state legislatures, the revision encourages organ donation and will hopefully save lives.

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\begin{itemize}
\item \textsuperscript{170} MINN. STAT. ANN. § 525A.09(a) (West Supp. 2008).
\item \textsuperscript{171} Id.
\end{itemize}

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