

**FIRST ENGROSSMENT  
with House Amendments**

Sixtieth  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2163**

Introduced by

Senators Kilzer, J. Lee

Representatives Carlisle, Delmore, Klemin, Porter

1 A BILL for an Act to create and enact chapter 23-06.6 of the North Dakota Century Code,  
2 relating to the revised Uniform Anatomical Gift Act; to amend and reenact section 23-06-01.2,  
3 subsection 5 of section 23-06.5-05.1, subsection 1 of section 39-06-03.1, subsection 2 of  
4 section 39-06-07, and subsection 1 of section 39-06-14 of the North Dakota Century Code,  
5 relating to cross-references to the Uniform Anatomical Gift Act; to repeal chapter 23-06.2 of the  
6 North Dakota Century Code, relating to the Uniform Anatomical Gift Act; and to provide a  
7 penalty.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 23-06-01.2 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **23-06-01.2. Application of other laws.** Sections 23-06-03, 23-06-04, 23-06-05,  
12 23-06-06, 23-06-07, 23-06-08, 23-06-09, 23-06-10, 23-06-11, 23-06-12, 23-06-16, 23-06-17,  
13 and 23-06-19 do not apply to any body or parts thereof disposed of after death pursuant to the  
14 authorization for disposal of a body or parts thereof provided in and for the purposes of chapter  
15 ~~23-06.2~~ 23-06.6.

16 **SECTION 2. AMENDMENT.** Subsection 5 of section 23-06.5-05.1 of the North Dakota  
17 Century Code is amended and reenacted as follows:

18 5. A document of gift for the purpose of making an anatomical gift, as set forth in  
19 chapter ~~23-06.2~~ 23-06.6 or an amendment to, revocation of, or refusal to make an  
20 anatomical gift;

21 **SECTION 3.** Chapter 23-06.6 of the North Dakota Century Code is created and  
22 enacted as follows:

23 **23-06.6-01. Definitions.** As used in this chapter, unless the context requires  
24 otherwise:

- 1           1. "Adult" means an individual who is eighteen years of age or older.
- 2           2. "Agent" means an individual:
  - 3           a. Authorized to make health care decisions on the principal's behalf by a power
  - 4           of attorney for health care; or
  - 5           b. Expressly authorized to make an anatomical gift on the principal's behalf by
  - 6           any other record signed by the principal.
- 7           3. "Anatomical gift" means a donation of all or part of a human body to take effect
- 8           after the donor's death for the purpose of transplantation, therapy, research, or
- 9           education.
- 10          4. "Decedent" means a deceased individual whose body or part is or may be the
- 11          source of an anatomical gift. The term includes a stillborn infant and, subject to
- 12          restrictions imposed by law other than this chapter, a fetus.
- 13          5. "Disinterested witness" means a witness other than the spouse, child, parent,
- 14          sibling, grandchild, grandparent, or guardian of the individual who makes, amends,
- 15          revokes, or refuses to make an anatomical gift or another adult who exhibited
- 16          special care and concern for the individual. The term does not include a person to
- 17          which an anatomical gift could pass under section 23-06.6-10.
- 18          6. "Document of gift" means a donor card or other record used to make an
- 19          anatomical gift. The term includes a statement or symbol on a driver's license,
- 20          identification card, or donor registry.
- 21          7. "Donor" means an individual whose body or part is the subject of an anatomical
- 22          gift.
- 23          8. "Donor registry" means a data base that contains records of anatomical gifts and
- 24          amendments to or revocations of anatomical gifts.
- 25          9. "Driver's license" means a license or permit issued by the department of
- 26          transportation to operate a vehicle regardless of whether conditions are attached
- 27          to the license or permit.
- 28          10. "Eye bank" means a person that is licensed, accredited, or regulated under federal
- 29          or state law to engage in the recovery, screening, testing, processing, storage, or
- 30          distribution of human eyes or portions of human eyes.



1        25. "Refusal" means an intention not to make an anatomical gift of an individual's body  
2        or part expressed by the individual in accordance with section 23-06.6-06 or which  
3        expressly states an intent to bar other persons from making an anatomical gift of  
4        an individual's body or part.

5        26. "Sign" means, with the present intent to authenticate or adopt a record:

6        a. To execute or adopt a tangible symbol; or

7        b. To attach to or logically associate with the record an electronic symbol,  
8        sound, or process.

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

12       28. "Tissue" means a portion of the human body other than an organ or an eye. The  
13       term does not include blood unless the blood is donated for the purpose of  
14       research or education.

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

18       30. "Transplant hospital" means a hospital that furnishes organ transplants and other  
19       medical and surgical specialty services required for the care of transplant patients.

20        **23-06.6-02. Applicability.** This chapter applies to an anatomical gift or amendment to,  
21       revocation of, or refusal to make an anatomical gift, whenever made.

22        **23-06.6-03. Who may make an anatomical gift before donor's death.** Subject to  
23       section 23-06.6-07, an anatomical gift of a donor's body or part may be made during the life of  
24       the donor for the purpose of transplantation, therapy, research, or education in the manner  
25       provided in section 23-06.6-04 by:

26        1. The donor, if the donor is an adult or if the donor is a minor and is:

27        a. Emancipated; or

28        b. Authorized under state law to apply for a driver's license because the donor is  
29        at least fourteen years of age;

30        2. An agent of the donor, unless the power of attorney for health care or other record  
31        prohibits the agent from making an anatomical gift;

1           3.   A parent of the donor, if the donor is an unemancipated minor; or

2           4.   The donor's guardian.

3           **23-06.6-04. Manner of making anatomical gift before donor's death.**

4           1.   A donor may make an anatomical gift:

5           a.   By authorizing a statement or symbol indicating that the donor has made an  
6           anatomical gift to be imprinted on the donor's driver's license or identification  
7           card;

8           b.   In a will;

9           c.   During a terminal illness or injury of the donor, by any form of communication  
10           addressed to at least two adults, at least one of whom is a disinterested  
11           witness; or

12           d.   As provided in subsection 2.

13          2.   A donor or other person authorized to make an anatomical gift under section  
14           23-06.6-03 may make a gift by a donor card or other record signed by the donor or  
15           other person making the gift or by authorizing that a statement or symbol indicating  
16           that the donor has made an anatomical gift be included on a donor registry. If the  
17           donor or other person is physically unable to sign a record, the record may be  
18           signed by another individual at the direction of the donor or other person and must:

19           a.   Be witnessed by at least two adults, at least one of whom is a disinterested  
20           witness, who have signed at the request of the donor or the other person; and

21           b.   State that it has been signed and witnessed as provided in subdivision a.

22          3.   Revocation, suspension, expiration, or cancellation of a driver's license or  
23           identification card upon which an anatomical gift is indicated does not invalidate  
24           the gift.

25          4.   An anatomical gift made by will takes effect upon the donor's death whether or not  
26           the will is probated. Invalidation of the will after the donor's death does not  
27           invalidate the gift.

28           **23-06.6-05. Amending or revoking anatomical gift before donor's death.**

29           1.   Subject to section 23-06.6-07, a donor or other person authorized to make an  
30           anatomical gift under section 23-06.6-03 may amend or revoke an anatomical gift  
31           by:

- 1           a. A record signed by:  
2               (1) The donor;  
3               (2) The other person; or  
4               (3) Subject to subsection 2, another individual acting at the direction of the  
5                     donor or the other person if the donor or other person is physically  
6                     unable to sign; or
- 7           b. A later-executed document of gift that amends or revokes a previous  
8                     anatomical gift or portion of an anatomical gift, either expressly or by  
9                     inconsistency.
- 10          2. A record signed pursuant to paragraph 3 of subdivision a of subsection 1 must:
- 11           a. Be witnessed by at least two adults, at least one of whom is a disinterested  
12                     witness, who have signed at the request of the donor or the other person; and
- 13           b. State that it has been signed and witnessed as provided in subdivision a.
- 14          3. Subject to section 23-06.6-07, a donor or other person authorized to make an  
15                     anatomical gift under section 23-06.6-03 may revoke an anatomical gift by the  
16                     destruction or cancellation of the document of gift, or the portion of the document  
17                     of gift used to make the gift, with the intent to revoke the gift.
- 18          4. A donor may amend or revoke an anatomical gift that was not made in a will by  
19                     any form of communication during a terminal illness or injury addressed to at least  
20                     two adults, at least one of whom is a disinterested witness.
- 21          5. A donor who makes an anatomical gift in a will may amend or revoke the gift in the  
22                     manner provided for amendment or revocation of wills or as provided in  
23                     subsection 1.

24          **23-06.6-06. Refusal to make anatomical gift - Effect of refusal.**

- 25          1. An individual may refuse to make an anatomical gift of the individual's body or part  
26                     by:
- 27           a. A record signed by:  
28               (1) The individual; or  
29               (2) Subject to subsection 2, another individual acting at the direction of the  
30                     individual if the individual is physically unable to sign;

- 1            b. The individual's will regardless of whether the will is admitted to probate or  
2            invalidated after the individual's death; or
- 3            c. Any form of communication made by the individual during the individual's  
4            terminal illness or injury addressed to at least two adults, at least one of  
5            whom is a disinterested witness.
- 6            2. A record signed pursuant to paragraph 2 of subdivision a of subsection 1 must:
- 7            a. Be witnessed by at least two adults, at least one of whom is a disinterested  
8            witness, who have signed at the request of the individual; and
- 9            b. State that it has been signed and witnessed as provided in subdivision a.
- 10           3. An individual who has made a refusal may amend or revoke the refusal:
- 11           a. In the manner provided in subsection 1 for making a refusal;
- 12           b. By subsequently making an anatomical gift pursuant to section 23-06.6-04  
13           which is inconsistent with the refusal; or
- 14           c. By destroying or canceling the record evidencing the refusal, or the portion of  
15           the record used to make the refusal, with the intent to revoke the refusal.
- 16           4. Except as otherwise provided in subsection 8 of section 23-06.6-07, in the  
17           absence of an express, contrary indication by the individual set forth in the refusal,  
18           an individual's unrevoked refusal to make an anatomical gift of the individual's  
19           body or part bars all other persons from making an anatomical gift of the  
20           individual's body or part.
- 21           **23-06.6-07. Preclusive effect of anatomical gift, amendment, or revocation.**
- 22           1. Except as otherwise provided in subsection 7 and subject to subsection 6, in the  
23           absence of an express, contrary indication by the donor, a person other than the  
24           donor is barred from making, amending, or revoking an anatomical gift of a donor's  
25           body or part if the donor made an anatomical gift of the donor's body or part under  
26           section 23-06.6-04 or an amendment to an anatomical gift of the donor's body or  
27           part under section 23-06.6-05.
- 28           2. A donor's revocation of an anatomical gift of the donor's body or part under section  
29           23-06.6-05 is not a refusal and does not bar another person specified in section  
30           23-06.6-03 or 23-06.6-08 from making an anatomical gift of the donor's body or  
31           part under section 23-06.6-04 or 23-06.6-09.

- 1           3. If a person other than the donor makes an unrevoked anatomical gift of the donor's  
2           body or part under section 23-06.6-04 or an amendment to an anatomical gift of  
3           the donor's body or part under section 23-06.6-05, another person may not make,  
4           amend, or revoke the gift of the donor's body or part under section 23-06.6-09.
- 5           4. A revocation of an anatomical gift of a donor's body or part under section  
6           23-06.6-05 by a person other than the donor does not bar another person from  
7           making an anatomical gift of the body or part under section 23-06.6-04 or  
8           23-06.6-09.
- 9           5. In the absence of an express, contrary indication by the donor or other person  
10          authorized to make an anatomical gift under section 23-06.6-03, an anatomical gift  
11          of a part is neither a refusal to give another part nor a limitation on the making of  
12          an anatomical gift of another part at a later time by the donor or another person.
- 13          6. In the absence of an express, contrary indication by the donor or other person  
14          authorized to make an anatomical gift under section 23-06.6-03, an anatomical gift  
15          of a part for one or more of the purposes set forth in section 23-06.6-03 is not a  
16          limitation on the making of an anatomical gift of the part for any of the other  
17          purposes by the donor or any other person under section 23-06.6-04 or  
18          23-06.6-09.
- 19          7. If a donor who is an unemancipated minor dies, a parent of the donor who is  
20          reasonably available may revoke or amend an anatomical gift of the donor's body  
21          or part.
- 22          8. If an unemancipated minor who signed a refusal dies, a parent of the minor who is  
23          reasonably available may revoke the minor's refusal.
- 24          **23-06.6-08. Who may make anatomical gift of decedent's body or part.**
- 25          1. Subject to subsections 2 and 3 and unless barred by section 23-06.6-06 or  
26          23-06.6-07, an anatomical gift of a decedent's body or part for the purpose of  
27          transplantation, therapy, research, or education may be made by any member of  
28          the following classes of persons who is reasonably available, in the order of priority  
29          listed:



- 1           a. An agent of the decedent at the time of death who could have made an  
2                    anatomical gift under subsection 2 of section 23-06.6-03 immediately before  
3                    the decedent's death;
- 4           b. The spouse of the decedent;
- 5           c. Adult children of the decedent;
- 6           d. Parents of the decedent;
- 7           e. Adult siblings of the decedent;
- 8           f. Adult grandchildren of the decedent;
- 9           g. Grandparents of the decedent;
- 10          h. An adult who exhibited special care and concern for the decedent;
- 11          i. The persons who were acting as the guardians of the decedent at the time of  
12                death; and
- 13          j. Any other person having the authority to dispose of the decedent's body.
- 14          2. If there is more than one member of a class listed in subdivision a, c, d, e, f, g, or i  
15                of subsection 1 entitled to make an anatomical gift, an anatomical gift may be  
16                made by a member of the class unless that member or a person to which the gift  
17                may pass under section 23-06.6-10 knows of an objection by another member of  
18                the class. If an objection is known, the gift may be made only by a majority of the  
19                members of the class who are reasonably available.
- 20          3. A person may not make an anatomical gift if, at the time of the decedent's death, a  
21                person in a prior class under subsection 1 is reasonably available to make or to  
22                object to the making of an anatomical gift.

23            **23-06.6-09. Manner of making, amending, or revoking anatomical gift of**  
24            **decedent's body or part.**

- 25            1. A person authorized to make an anatomical gift under section 23-06.6-08 may  
26                make an anatomical gift by a document of gift signed by the person making the gift  
27                or by that person's oral communication that is electronically recorded or is  
28                contemporaneously reduced to a record and signed by the individual receiving the  
29                oral communication.
- 30            2. Subject to subsection 3, an anatomical gift by a person authorized under section  
31                23-06.6-08 may be amended or revoked orally or in a record by any member of a

1           prior class who is reasonably available. If more than one member of the prior  
2           class is reasonably available, the gift made by a person authorized under section  
3           23-06.6-08 may be:

4           a. Amended only if a majority of the reasonably available members agree to the  
5           amending of the gift; or

6           b. Revoked only if a majority of the reasonably available members agree to the  
7           revoking of the gift or if they are equally divided as to whether to revoke the  
8           gift.

9           3. A revocation under subsection 2 is effective only if, before an incision has been  
10           made to remove a part from the donor's body or before invasive procedures have  
11           begun to prepare the recipient, the procurement organization, transplant hospital,  
12           or physician or technician knows of the revocation.

13           **23-06.6-10. Persons that may receive anatomical gift - Purpose of anatomical gift.**

14           1. An anatomical gift may be made to the following persons named in the document  
15           of gift:

16           a. A hospital; accredited medical school, dental school, college, or university;  
17           organ procurement organization; or other appropriate person for research or  
18           education;

19           b. Subject to subsection 2, an individual designated by the person making the  
20           anatomical gift if the individual is the recipient of the part;

21           c. An eye bank or tissue bank.

22           2. If an anatomical gift to an individual under subdivision b of subsection 1 cannot be  
23           transplanted into the individual, the part passes in accordance with subsection 7 in  
24           the absence of an express, contrary indication by the person making the  
25           anatomical gift.

26           3. If an anatomical gift of one or more specific parts or of all parts is made in a  
27           document of gift that does not name a person described in subsection 1 but  
28           identifies the purpose for which an anatomical gift may be used, the following rules  
29           apply:

30           a. If the part is an eye and the gift is for the purpose of transplantation or  
31           therapy, the gift passes to the appropriate eye bank.

- 1            b. If the part is tissue and the gift is for the purpose of transplantation or therapy,  
2            the gift passes to the appropriate tissue bank.
- 3            c. If the part is an organ and the gift is for the purpose of transplantation or  
4            therapy, the gift passes to the appropriate organ procurement organization as  
5            custodian of the organ.
- 6            d. If the part is an organ, an eye, or tissue and the gift is for the purpose of  
7            research or education, the gift passes to the appropriate procurement  
8            organization.
- 9            4. For the purpose of subsection 3, if there is more than one purpose of an  
10           anatomical gift set forth in the document of gift but the purposes are not set forth in  
11           any priority, the gift must be used for transplantation or therapy, if suitable. If the  
12           gift cannot be used for transplantation or therapy, the gift may be used for research  
13           or education.
- 14           5. If an anatomical gift of one or more specific parts is made in a document of gift that  
15           does not name a person described in subsection 1 and does not identify the  
16           purpose of the gift, the gift may be used only for transplantation or therapy, and the  
17           gift passes in accordance with subsection 7.
- 18           6. If a document of gift specifies only a general intent to make an anatomical gift by  
19           words such as "donor", "organ donor", or "body donor", or by a symbol or  
20           statement of similar import, the gift may be used only for transplantation or  
21           therapy, and the gift passes in accordance with subsection 7.
- 22           7. For purposes of subsections 2, 5, and 6 the following rules apply:
- 23           a. If the part is an eye, the gift passes to the appropriate eye bank.
- 24           b. If the part is tissue, the gift passes to the appropriate tissue bank.
- 25           c. If the part is an organ, the gift passes to the appropriate organ procurement  
26           organization as custodian of the organ.
- 27           8. An anatomical gift of an organ for transplantation or therapy, other than an  
28           anatomical gift under subdivision b of subsection 1, passes to the organ  
29           procurement organization as custodian of the organ.
- 30           9. If an anatomical gift does not pass pursuant to subsection 1, 2, 3, 4, 5, 6, 7, or 8 or  
31           the decedent's body or part is not used for transplantation, therapy, research, or

1           education, custody of the body or part passes to the person under obligation to  
2           dispose of the body or part.

3       10. A person may not accept an anatomical gift if the person knows that the gift was  
4           not effectively made under section 23-06.6-04 or 23-06.6-09 or if the person knows  
5           that the decedent made a refusal under section 23-06.6-06 that was not revoked.  
6           For purposes of the subsection, if a person knows that an anatomical gift was  
7           made on a document of gift, the person is deemed to know of any amendment or  
8           revocation of the gift or any refusal to make an anatomical gift on the same  
9           document of gift.

10       11. Except as otherwise provided in subdivision b of subsection 1, nothing in this  
11           chapter affects the allocation of organs for transplantation or therapy.

12       **23-06.6-11. Search and notification.**

13       1. The following persons shall make a reasonable search of an individual who the  
14           person reasonably believes is dead or near death for a document of gift or other  
15           information identifying the individual as a donor or as an individual who made a  
16           refusal:

17           a. A law enforcement officer, firefighter, paramedic, or other emergency rescuer  
18           finding the individual; and

19           b. If no other source of the information is immediately available, a hospital, as  
20           soon as practical after the individual's arrival at the hospital.

21       2. If a document of gift or a refusal to make an anatomical gift is located by the  
22           search required by subdivision a of subsection 1 and the individual or deceased  
23           individual to whom it relates is taken to a hospital, the person responsible for  
24           conducting the search shall send the document of gift or refusal to the hospital.

25       3. A person is not subject to criminal or civil liability for failing to discharge the duties  
26           imposed by this section but may be subject to administrative sanctions.

27       **23-06.6-12. Delivery of document of gift not required - Right to examine.**

28       1. A document of gift need not be delivered during the donor's lifetime to be effective.

29       2. Upon or after an individual's death, a person in possession of a document of gift or  
30           a refusal to make an anatomical gift with respect to the individual shall allow  
31           examination and copying of the document of gift or refusal by a person authorized

1           to make or object to the making of an anatomical gift with respect to the individual  
2           or by a person to which the gift could pass under section 23-06.6-10.

3           **23-06.6-13. Rights and duties of procurement organization and others.**

- 4           1. When a hospital refers an individual at or near death to a procurement  
5           organization, the organization shall make a reasonable search of the records of the  
6           department of transportation and any donor registry that it knows exists for the  
7           geographical area in which the individual resides to ascertain whether the  
8           individual has made an anatomical gift.
- 9           2. A procurement organization must be allowed reasonable access to information in  
10           the records of the department of transportation to ascertain whether an individual  
11           at or near death is a donor.
- 12           3. When a hospital refers an individual at or near death to a procurement  
13           organization, the organization may conduct any reasonable examination necessary  
14           to ensure the medical suitability of a part that is or could be the subject of an  
15           anatomical gift for transplantation, therapy, research, or education from a donor or  
16           a prospective donor. During the examination period, measures necessary to  
17           ensure the medical suitability of the part may not be withdrawn unless the hospital  
18           or procurement organization knows that the individual expressed a contrary intent.
- 19           4. Unless prohibited by law other than this chapter, at any time after a donor's death,  
20           the person to which a part passes under section 23-06.6-10 may conduct any  
21           reasonable examination necessary to ensure the medical suitability of the body or  
22           part for its intended purpose.
- 23           5. Unless prohibited by law other than this chapter, an examination under  
24           subsection 3 or 4 may include an examination of all medical and dental records of  
25           the donor or prospective donor.
- 26           6. Upon the death of a minor who was a donor or had signed a refusal, unless a  
27           procurement organization knows the minor is emancipated, the procurement  
28           organization shall conduct a reasonable search for the parents of the minor and  
29           provide the parents with an opportunity to revoke or amend the anatomical gift or  
30           revoke the refusal.

- 1           7. Upon referral by a hospital under subsection 1, a procurement organization shall  
2           make a reasonable search for any person listed in section 23-06.6-08 having  
3           priority to make an anatomical gift on behalf of a prospective donor. If a  
4           procurement organization receives information that an anatomical gift to any other  
5           person was made, amended, or revoked, it shall promptly advise the other person  
6           of all relevant information.
- 7           8. Subject to subsection 9 of section 23-06.6-10 and section 23-06.6-22, the rights of  
8           the person to which a part passes under section 23-06.6-10 are superior to the  
9           rights of all others with respect to the part. The person may accept or reject an  
10          anatomical gift in whole or in part. Subject to the terms of the document of gift and  
11          this chapter, a person that accepts an anatomical gift of an entire body may allow  
12          embalming, burial or cremation, and use of remains in a funeral service. If the gift  
13          is of a part, the person to which the part passes under section 23-06.6-11, upon  
14          the death of the donor and before embalming, burial, or cremation, shall cause the  
15          part to be removed without unnecessary mutilation.
- 16          9. Neither the physician who attends the decedent at death nor the physician who  
17          determines the time of the decedent's death may participate in the procedures for  
18          removing or transplanting a part from the decedent.
- 19          10. A physician or technician may remove a donated part from the body of a donor  
20          which the physician or technician is qualified to remove.

21           **23-06.6-14. Coordination of procurement and use.** Each hospital in this state shall  
22 enter into agreements or affiliations with procurement organizations for coordination of  
23 procurement and use of anatomical gifts.

24           **23-06.6-15. Sale or purchase of parts prohibited - Penalty.**

- 25           1. Except as otherwise provided in subsection 2, a person that for valuable  
26           consideration, knowingly purchases or sells a part for transplantation or therapy if  
27           removal of a part from an individual is intended to occur after the individual's death  
28           commits a class B misdemeanor.
- 29           2. A person may charge a reasonable amount for the removal, processing,  
30           preservation, quality control, storage, transportation, implantation, or disposal of a  
31           part.

1           **23-06.6-16. Other prohibited act - Penalty.** A person that, in order to obtain a  
2 financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift,  
3 an amendment or revocation of a document of gift, or a refusal commits a class B  
4 misdemeanor.

5           **23-06.6-17. Immunity.**

- 6           1. A person that acts in accordance with this chapter or with the applicable  
7 anatomical gift law of another state, or attempts in good faith to do so, is not liable  
8 for the act in a civil action, criminal prosecution, or administrative proceeding.
- 9           2. Neither the person making an anatomical gift nor the donor's estate is liable for any  
10 injury or damage that results from the making or use of the gift.
- 11           3. In determining whether an anatomical gift has been made, amended, or revoked  
12 under this chapter, a person may rely upon representations of an individual listed  
13 in subdivision b, c, d, e, f, g, or h of subsection 1 of section 23-06.6-08 relating to  
14 the individual's relationship to the donor or prospective donor unless the person  
15 knows that the representation is untrue.

16           **23-06.6-18. Law governing validity - Choice of law as to execution of document of**  
17 **gift - Presumption of validity.**

- 18           1. A document of gift is valid if executed in accordance with:
- 19           a. This chapter;
- 20           b. The laws of the state or country where the document of gift was executed; or
- 21           c. The laws of the state or country where the person making the anatomical gift  
22 was domiciled, has a place of residence, or was a national at the time the  
23 document of gift was executed.
- 24           2. If a document of gift is valid under this section, the law of this state governs the  
25 interpretation of the document of gift.
- 26           3. A person may presume that a document of gift or amendment of an anatomical gift  
27 is valid unless that person knows that it was not validly executed or was revoked.

28           **23-06.6-19. Donor registry.**

- 29           1. The state department of health may establish or contract for the establishment of a  
30 donor registry.

- 1           2. The department of transportation shall cooperate with a person that administers  
2           any donor registry that this state establishes, contracts for, or recognizes for the  
3           purpose of transferring to the donor registry all relevant information regarding a  
4           donor's making, amendment to, or revocation of an anatomical gift.
- 5           3. A donor registry must:
- 6           a. Allow a donor or other person authorized under section 23-06.6-04 to include  
7           on the donor registry a statement or symbol that the donor has made,  
8           amended, or revoked an anatomical gift;
- 9           b. Be accessible to a procurement organization to allow it to obtain relevant  
10           information on the donor registry to determine, at or near death of the donor  
11           or a prospective donor, whether the donor or prospective donor has made,  
12           amended, or revoked an anatomical gift; and
- 13           c. Be accessible for purposes of subdivisions a and b seven days a week on a  
14           twenty-four-hour basis.
- 15           4. Personally identifiable information on a donor registry about a donor or prospective  
16           donor may not be used or disclosed without the express consent of the donor,  
17           prospective donor, or person that made the anatomical gift for any purpose other  
18           than to determine, at or near death of the donor or prospective donor, whether the  
19           donor or prospective donor has made, amended, or revoked an anatomical gift.
- 20           5. This section does not prohibit any person from creating or maintaining a donor  
21           registry that is not established by or under contract with the state. Any such  
22           registry must comply with subsections 3 and 4.

23           **23-06.6-20. Effect of anatomical gift on advance health care directive.**

- 24           1. In this section:
- 25           a. "Advance health care directive" means a health care directive under chapter  
26           23-06.5, a power of attorney for health care, or a record signed by a  
27           prospective donor containing the prospective donor's direction concerning a  
28           health care decision for the prospective donor.
- 29           b. "Declaration" means a record signed by a prospective donor specifying the  
30           circumstances under which a life support system may be withheld or  
31           withdrawn from the prospective donor.



1           c. "Health care decision" means any decision made regarding the health care of  
2           the prospective donor.

3           2. If a prospective donor has a declaration or advance health care directive,  
4           measures necessary to ensure the medical suitability of an organ for  
5           transplantation or therapy may not be withheld or withdrawn from the prospective  
6           donor, unless the declaration or advance health care directive expressly provides  
7           to the contrary.

8           **23-06.6-21. Cooperation between coroner or medical examiner and a**  
9           **procurement organization.**

10          1. A coroner or medical examiner shall cooperate with procurement organizations to  
11          maximize the opportunity to recover anatomical gifts for the purpose of  
12          transplantation, therapy, research, or education.

13          2. If a coroner or medical examiner receives notice from a procurement organization  
14          that an anatomical gift might be available or was made with respect to a decedent  
15          whose body is under the jurisdiction of the coroner or medical examiner and a  
16          post-mortem examination is going to be performed, unless the coroner or medical  
17          examiner denies recovery in accordance with section 23-06.6-22, the coroner or  
18          medical examiner or designee of the coroner or medical examiner shall conduct a  
19          post-mortem examination of the body or the part in a manner and within a period  
20          compatible with its preservation for the purposes of the gift.

21          3. A part may not be removed from the body of a decedent under the jurisdiction of a  
22          coroner or medical examiner for transplantation, therapy, research, or education  
23          unless the part is the subject of an anatomical gift. The body of a decedent under  
24          the jurisdiction of the coroner or medical examiner may not be delivered to a  
25          person for research or education unless the body is the subject of an anatomical  
26          gift. This subsection does not preclude a coroner or medical examiner from  
27          performing the medicolegal investigation upon the body or parts of a decedent  
28          under the jurisdiction of the coroner or medical examiner.

29          **23-06.6-22. Facilitation of anatomical gift from decedent whose body is under**  
30          **jurisdiction of coroner or medical examiner.**

- 1           1. Upon request of a procurement organization, a coroner or medical examiner shall  
2           release to the procurement organization the name, contact information, and  
3           available medical and social history of a decedent whose body is under the  
4           jurisdiction of the coroner or medical examiner. If the decedent's body or part is  
5           medically suitable for transplantation, therapy, research, or education, the coroner  
6           or medical examiner shall release post-mortem examination results to the  
7           procurement organization. The procurement organization may make a subsequent  
8           disclosure of the post-mortem examination results or other information received  
9           from the coroner or medical examiner only if relevant to transplantation or therapy.
- 10          2. The coroner or medical examiner may conduct a medicolegal examination by  
11          reviewing all medical records, laboratory test results, x-rays, other diagnostic  
12          results, and other information that any person possesses about a donor or  
13          prospective donor whose body is under the jurisdiction of the coroner or medical  
14          examiner which the coroner or medical examiner determines may be relevant to  
15          the investigation.
- 16          3. A person that has any information requested by a coroner or medical examiner  
17          pursuant to subsection 2 shall provide that information as expeditiously as possible  
18          to allow the coroner or medical examiner to conduct the medicolegal investigation  
19          within a period compatible with the preservation of parts for the purpose of  
20          transplantation, therapy, research, or education.
- 21          4. If an anatomical gift has been or might be made of a part of a decedent whose  
22          body is under the jurisdiction of the coroner or medical examiner and a  
23          post-mortem examination is not required, or the coroner or medical examiner  
24          determines that a post-mortem examination is required but that the recovery of the  
25          part that is the subject of an anatomical gift will not interfere with the examination,  
26          the coroner or medical examiner and procurement organization shall cooperate in  
27          the timely removal of the part from the decedent for the purpose of transplantation,  
28          therapy, research, or education.
- 29          5. If an anatomical gift of a part from the decedent under the jurisdiction of the  
30          coroner or medical examiner has been or might be made, but the coroner or  
31          medical examiner initially believes that the recovery of the part could interfere with

1           the post-mortem investigation into the decedent's cause or manner of death, the  
2           coroner or medical examiner shall consult with the procurement organization or  
3           physician or technician designated by the procurement organization about the  
4           proposed recovery. The procurement organization shall provide the coroner or  
5           medical examiner with all information the organization has which could relate to  
6           the cause or manner of the decedent's death. After consultation, the coroner or  
7           medical examiner may allow the recovery.

8           6. Following the consultation under subsection 5, in the absence of mutually  
9           agreed-upon protocols to resolve conflict between the coroner or medical examiner  
10           and the procurement organization, if the coroner or medical examiner intends to  
11           deny recovery of an organ for transplantation, the coroner or medical examiner or  
12           designee of the coroner or medical examiner, at the request of the procurement  
13           organization, shall attend the removal procedure for the part before making a final  
14           determination not to allow the procurement organization to recover the part.  
15           During the removal procedure, the coroner or medical examiner or designee or the  
16           coroner or medical examiner may allow recovery by the procurement organization  
17           to proceed, or, if the coroner or medical examiner or designee of the coroner or  
18           medical examiner reasonably believes that the part may be involved in determining  
19           the decedent's cause or manner of death, deny recovery by the procurement  
20           organization.

21           7. If the coroner or medical examiner or designee or the coroner or medical examiner  
22           denies recovery under subsection 6, the coroner or medical examiner or designee  
23           of the coroner or medical examiner shall:

- 24           a. Explain in a record the specific reasons for not allowing recovery of the part;  
25           b. Include the specific reasons in the records of the coroner or medical  
26           examiner; and  
27           c. Provide a record with the specific reasons to the procurement organization.

28           8. If the coroner or medical examiner or designee of the coroner or medical examiner  
29           allows recovery of a part under subsection 4, 5, or 6, the procurement  
30           organization, upon request, shall cause the physician or technician who removes  
31           the part to provide the coroner or medical examiner with a record describing the

1           condition of the part, a biopsy, a photograph, and any other information and  
2           observations that would assist in the post-mortem examination.

3           9. If a coroner or medical examiner or designee of a coroner or medical examiner is  
4           required to be present at a removal procedure under subsection 6, upon request  
5           the procurement organization requesting the recovery of the part shall reimburse  
6           the coroner or medical examiner or designee of the coroner or medical examiner  
7           for the additional costs incurred in complying with subsection 6.

8           **23-06.6-23. Relation to Electronic Signatures in Global and National Commerce**

9           **Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global  
10          and National Commerce Act [15 U.S.C. 7001 et seq.], but does not modify, limit or supersede  
11          section 101(a) of that Act [15 U.S.C. 7001], or authorize electronic delivery of any of the notices  
12          described in section 103(b) of that Act [15 U.S.C. 7003(b)].

13          **SECTION 4. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the North Dakota  
14 Century Code is amended and reenacted as follows:

15          1. The director shall issue upon request a nondriver color photo identification card to  
16 any North Dakota resident who fulfills the requirements of this section. An  
17 application for an identification card must be made on a form furnished by the  
18 director. The application must provide for the voluntary identification of the  
19 applicant as a donor under the provisions of chapter ~~23-06.2~~ 23-06.6. If requested  
20 on the identification card application, the identification card issued by the director  
21 must include a statement making an anatomical gift under chapter ~~23-06.2~~  
22 23-06.6. If the person is under the age of eighteen or at least the age of eighteen  
23 and under the age of twenty-one, the photo must be against the same color  
24 background required on a motor vehicle operator's license for an operator of that  
25 age.

26          **SECTION 5. AMENDMENT.** Subsection 2 of section 39-06-07 of the North Dakota  
27 Century Code is amended and reenacted as follows:

28          2. Every application must state the full name, date of birth, sex, social security  
29 number, residence and mailing address, and briefly describe the applicant. In  
30 signing the application the applicant is deemed to have certified that all information  
31 contained on the application is true and correct. The application must be

1 accompanied by the proper fee. The application must also provide for the  
2 voluntary identification of the applicant as a donor under the provisions of chapter  
3 ~~23-06.2~~ 23-06.6. The application must contain such other information as the  
4 director may require.

5 **SECTION 6. AMENDMENT.** Subsection 1 of section 39-06-14 of the North Dakota  
6 Century Code is amended and reenacted as follows:

7 1. The director, upon payment of a ten dollar fee, shall issue to every qualified  
8 applicant an operator's license as applied for in the form prescribed by the director.  
9 The license must bear a distinguishing number assigned to the licensee, a color  
10 photograph of the licensee, the full name, date of birth, residence address, and a  
11 brief description of the licensee, and either a facsimile of the signature of the  
12 licensee or a space upon which the licensee shall write the licensee's usual  
13 signature. The director may not issue a distinguishing number that is, contains,  
14 can be converted to, or is an encrypted version of the applicant's social security  
15 number. If the licensee is under the age of eighteen, the photograph must be  
16 against a color border or background that is different from the color used for other  
17 licensees. If the licensee is at least the age of eighteen and is under the age of  
18 twenty-one, the photograph must be against a color border or background that is  
19 different from the color used for other licensees. If requested on the license  
20 application, the license issued by the director must include a statement making an  
21 anatomical gift under chapter ~~23-06.2~~ 23-06.6. No license is valid until it has been  
22 signed by the licensee with the licensee's usual signature. The department shall  
23 develop a system to require each applicant for an operator's license or renewal of  
24 an operator's license to determine whether or not the applicant wishes to be a  
25 donor under chapter ~~23-06.2~~ 23-06.6. For purposes of verification, an officer may  
26 require the licensee to write the licensee's signature in the presence of the officer.  
27 The director may adopt rules, pursuant to chapter 28-32, relating to the manner in  
28 which photographs are to be obtained and placed on operator's licenses. The  
29 photograph may be produced by digital imaging or other electronic means and is  
30 not a public record.

- 1           **SECTION 7. REPEAL.** Chapter 23-06.2 of the North Dakota Century Code is
- 2 repealed.