

TITLE 39  
HEALTH AND SAFETY

CHAPTER 34  
REVISED UNIFORM ANATOMICAL GIFT ACT

39-3401. SHORT TITLE. This chapter shall be known and may be cited as the "Revised Uniform Anatomical Gift Act."

[39-3401, added 2007, ch. 30, sec. 2, p. 61.]

39-3401A. STORAGE AND TRANSPORT OF HUMAN BODIES OR BODY PARTS -- DUTIES OF STATE DEPARTMENT OF HEALTH AND WELFARE -- ENFORCEMENT AND PENALTIES. (1) In addition to any other duties and responsibilities, the director of the department of health and welfare shall register facilities for the storage and/or transport of human bodies or human body parts which are intended for research or for educational purposes. The director shall require such facilities to certify that the human body, part or parts to be supplied did not come from a person who has tested positive for acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, and that the test was negative for the presence of HIV antibodies or antigens, hepatitis or other communicable diseases as that term is defined in departmental administrative rule.

(2) All facilities referred to in this section shall provide to the department, on a form provided by the department, the following: a place of business, legal mailing address, and a description of the nature of the facility, including the mechanism or manner of acquisition, storage and transport of human bodies or human body parts.

(3) The board of health and welfare shall promulgate rules implementing the provisions of this section.

(4) The director may initiate a civil enforcement action through the attorney general as provided in this subsection. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this section or any rule or order that has become effective pursuant to this section. Such action may be brought to compel compliance with any provision of this section or with any rule or order promulgated hereunder. The director shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action.

(5) Any person determined in a civil enforcement action to have violated any provision of this section or any rule or order promulgated pursuant to this section shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000) per violation. The method of recovery of said penalty shall be by a civil enforcement action in the district court in and for the county where the violation occurred. All civil penalties collected under this section shall be paid into the general fund of the state.

[39-3401A, added 2008, ch. 256, sec. 1, p. 748.]

39-3402. DEFINITIONS. In this chapter:

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

(2) "Agent" means an individual:

- (a) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or
- (b) 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 [39-3412](#), Idaho Code.
- (6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card or donor registry.
- (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.
- (9) "Driver's license" means a license or permit issued by the Idaho transportation department 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 Idaho transportation department.
- (14) "Know" means to have actual knowledge.
- (15) "Minor" means an individual who is under eighteen (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 who 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 [39-3407](#), Idaho Code, that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

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

(a) To execute or adopt a tangible symbol; or

(b) To 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 the blood is donated 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.

[39-3402, added 2007, ch. 30, sec. 2, p. 61.]

39-3403. APPLICABILITY. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

[39-3403, added 2007, ch. 30, sec. 2, p. 63.]

39-3404. WHO MAY MAKE ANATOMICAL GIFT BEFORE DONOR'S DEATH. Subject to section [39-3408](#), Idaho Code, 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 [39-3405](#), Idaho Code, by:

- (1) The donor, if the donor is an adult or if the donor is a minor and is:
  - (a) Emancipated; or
  - (b) At least fifteen (15) years of age, provided however, that if the donor is fifteen (15) years of age or older and less than eighteen (18) years of age, a parent or an adult guardian must consent in writing in the presence of the donor.
- (2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) A parent of the donor, if the donor is an unemancipated minor; or
- (4) The donor's guardian.

[39-3404, added 2007, ch. 30, sec. 2, p. 63; am. 2018, ch. 191, sec. 1, p. 417.]

39-3405. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (1) A donor may make an anatomical gift:

- (a) 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;
  - (b) In a will;
  - (c) During a terminal illness or injury of the donor, by any form of communication addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or
  - (d) As provided in subsection (2) of this section.
- (2) A donor or other person authorized to make an anatomical gift under section [39-3404](#), Idaho Code, 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 must:
- (a) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
  - (b) State that it has been signed and witnessed as provided in paragraph (a) of this subsection.
- (3) 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.
- (4) 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.

[39-3405, added 2007, ch. 30, sec. 2, p. 63.]

39-3406. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (1) Subject to section [39-3408](#), Idaho Code, a donor or other person authorized to make an anatomical gift under section [39-3404](#), Idaho Code, may amend or revoke an anatomical gift by:

- (a) A record signed by:
  - (i) The donor;
  - (ii) The other person; or

- (iii) Subject to subsection (2) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or
- (b) 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.
- (2) A record signed pursuant to subsection (1) (a) (iii) of this section must:
  - (a) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
  - (b) State that it has been signed and witnessed as provided in paragraph (a) of this subsection.
- (3) Subject to section [39-3408](#), Idaho Code, a donor or other person authorized to make an anatomical gift under section [39-3404](#), Idaho Code, may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.
- (4) 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 (2) adults, at least one (1) of whom is a disinterested witness.
- (5) 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 subsection (1) of this section.

[39-3406, added 2007, ch. 30, sec. 2, p. 64.]

39-3407. REFUSAL TO MAKE ANATOMICAL GIFT -- EFFECT OF REFUSAL. (1) An individual may refuse to make an anatomical gift of the individual's body or part by:

- (a) A record signed by:
  - (i) The individual; or
  - (ii) Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;
- (b) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or
- (c) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.
- (2) A record signed pursuant to subsection (1) (a) (ii) of this section must:
  - (a) Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the individual; and
  - (b) State that it has been signed and witnessed as provided in paragraph (a) of this subsection.
- (3) An individual who has made a refusal may amend or revoke the refusal:
  - (a) In the manner provided in subsection (1) of this section for making a refusal;
  - (b) By subsequently making an anatomical gift pursuant to section [39-3405](#), Idaho Code, that is inconsistent with the refusal; or

(c) 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.

(4) Except as otherwise provided in section [39-3408](#)(8), Idaho Code, 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.

[39-3407, added 2007, ch. 30, sec. 2, p. 65.]

39-3408. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT OR REVOCATION. (1) Except as otherwise provided in subsection (7) of this section and subject to subsection (6) of this section, 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 [39-3405](#), Idaho Code, or an amendment to an anatomical gift of the donor's body or part under section [39-3406](#), Idaho Code.

(2) A donor's revocation of an anatomical gift of the donor's body or part under section [39-3406](#), Idaho Code, is not a refusal and does not bar another person specified in section [39-3404](#) or [39-3409](#), Idaho Code, from making an anatomical gift of the donor's body or part under section [39-3405](#) or [39-3410](#), Idaho Code.

(3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under section [39-3405](#), Idaho Code, or an amendment to an anatomical gift of the donor's body or part under section [39-3406](#), Idaho Code, another person may not make, amend or revoke the gift of the donor's body or part under section [39-3410](#), Idaho Code.

(4) A revocation of an anatomical gift of a donor's body or part under section [39-3406](#), Idaho Code, by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section [39-3405](#) or [39-3410](#), Idaho Code.

(5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section [39-3404](#), Idaho Code, 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.

(6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section [39-3404](#), Idaho Code, an anatomical gift of a part for one (1) or more of the purposes set forth in section [39-3404](#), Idaho Code, 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 [39-3405](#) or [39-3410](#), Idaho Code.

(7) 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.

(8) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

[39-3408, added 2007, ch. 30, sec. 2, p. 65.]

39-3409. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (1) Subject to subsections (2) and (3) of this section and unless barred by sec-

tion [39-3407](#) or [39-3408](#), Idaho Code, an anatomical gift of a decedent's body or part for 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 order of priority listed:

- (a) An agent of the decedent at the time of death who could have made an anatomical gift under section [39-3404](#)(2), Idaho Code, immediately before the decedent's death;
- (b) The spouse of the decedent;
- (c) Adult children of the decedent;
- (d) Parents of the decedent;
- (e) Adult siblings of the decedent;
- (f) Adult grandchildren of the decedent;
- (g) Grandparents of the decedent;
- (h) An adult who exhibited special care and concern for the decedent;
- (i) The persons who were acting as the guardians of the person of the decedent at the time of death; and
- (j) Any other person having the authority to dispose of the decedent's body.

(2) If there is more than one (1) member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g) or (i) of this section 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 [39-3412](#), Idaho Code, 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.

(3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift.

[39-3409, added 2007, ch. 30, sec. 2, p. 66.]

39-3410. MANNER OF MAKING, AMENDING OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (1) A person authorized to make an anatomical gift under section [39-3409](#), Idaho Code, 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.

(2) Subject to subsection (3) of this section, an anatomical gift by a person authorized under section [39-3409](#), Idaho Code, 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 (1) member of the prior class is reasonably available, the gift made by a person authorized under section [39-3409](#), Idaho Code, may be:

- (a) Amended only if a majority of the reasonably available members agree to the amending of the gift; or
- (b) 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.

(3) A revocation under subsection (2) of this section 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.



[39-3410, added 2007, ch. 30, sec. 2, p. 67.]

39-3411. REQUIREMENTS FOR INFORMED CONSENT. In the absence of a document of gift or other evidence of an individual's intention to make or refuse to make an anatomical gift, the following information shall be provided to any person or persons, listed in section [39-3409](#), Idaho Code, approached for purposes of obtaining informed consent:

- (1) A confirmation of the donor's identity and his or her clinical terminal condition;
- (2) A general description of the purposes of anatomical gift donation;
- (3) Identification of specific organs and/or tissues, including cells, that are being requested for donation, provided that subsequent information on the specific gifts recovered shall be supplied;
- (4) An explanation that the retrieved organs and/or tissues may be used for transplantation, therapy, medical research or educational purposes;
- (5) A general description of the recovery process including, but not limited to, timing, relocation of the donor if applicable, and contact information;
- (6) An explanation that laboratory tests and a medical and/or social history will be completed to determine the medical suitability of the donor and that blood samples from the donor will be tested for certain transmissible diseases, including testing for HIV antibodies or antigens;
- (7) An explanation that the spleen, lymph nodes and blood may be removed, and cultures may be performed, for the purpose of determining donor suitability and donor and recipient capability;
- (8) A statement granting access to the donor's medical records and providing that the medical records may be released to other appropriate parties;
- (9) An explanation that costs directly related to the evaluation, recovery, preservation and placement of the organs and/or tissues will not be charged to the family members of the donor;
- (10) An explanation of the impact the donation process may have on burial arrangements and on the appearance of the donor's body; and
- (11) A statement that tissues or parts may be retrieved and/or used by for-profit procurement entities.

[39-3411, added 2007, ch. 30, sec. 2, p. 67.]

39-3412. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT -- PURPOSE OF ANATOMICAL GIFT. (1) An anatomical gift may be made to the following persons named in the document of gift:

- (a) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;
  - (b) Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part;
  - (c) An eye bank or tissue bank.
- (2) If an anatomical gift to an individual under subsection (1) (b) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.
- (3) If an anatomical gift of one (1) or more specific parts or of all parts is made in a document of gift that does not name a person described



in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) 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.

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

(c) 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.

(d) 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.

(4) For the purpose of subsection (3) of this section, if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must 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.

(5) If an anatomical gift of one (1) or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(6) 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 only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.

(7) For purposes of subsections (2), (5) and (6) of this section, the following rules apply:

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

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

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

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b) of this section, passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) of this section 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.

(10) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section [39-3405](#) or [39-3410](#), Idaho Code, or if the person knows that the decedent made a refusal under section [39-3407](#), Idaho Code, that was not revoked. For purposes of this subsection, 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.

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

39-3413. SEARCH AND NOTIFICATION. (1) For purposes of this section, "first responder" means a law enforcement officer, firefighter, emergency medical services provider, coroner or other emergency rescuer.

(2) 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:

(a) A first responder finding the individual; and

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

(3) For all individuals identified as a donor, following the determination that an individual is deceased by a person qualified to do so, such person shall, as soon as reasonably possible, notify the Idaho state communication center of the location where the deceased will be or has been transported to and include the deceased individual's name and date of birth if known. The Idaho state communication center shall, as soon as reasonably possible, notify the appropriate organ procurement organization, tissue bank or eye bank.

(4) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (2) (a) of this section 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.

(5) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section.

[39-3413, added 2007, ch. 30, sec. 2, p. 69; am. 2013, ch. 247, sec. 1, p. 597.]

39-3414. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED -- RIGHT TO EXAMINE. (1) A document of gift need not be delivered during the donor's lifetime to be effective.

(2) 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 [39-3412](#), Idaho Code.

[39-3414, added 2007, ch. 30, sec. 2, p. 69.]

39-3415. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS. (1) 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 Idaho transportation department and any donor registry that it knows exist for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization must be allowed reasonable access to information in the records of the Idaho transportation department to ascertain whether an individual at or near death is a donor.

(3) 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.

(4) 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 [39-3412](#), Idaho Code, may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under subsection (3) or (4) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or who 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.

(7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in section [39-3409](#), Idaho Code, 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.

(8) Subject to section [39-3412](#)(9), Idaho Code, the rights of the person to which a part passes under section [39-3412](#), Idaho Code, 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 [39-3412](#), Idaho Code, upon the death of the donor and before embalming, burial or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) 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.

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

[39-3415, added 2007, ch. 30, sec. 2, p. 70.]

39-3416. COORDINATION OF PROCUREMENT AND USE. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

[39-3416, added 2007, ch. 30, sec. 2, p. 71.]

39-3417. SALE OR PURCHASE OF PARTS PROHIBITED. (1) Except as otherwise provided in subsection (2) of this section, 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 commits a felony and upon conviction is subject to a fine

not exceeding fifty thousand dollars (\$50,000) or imprisonment not exceeding five (5) years, or both such fine and imprisonment.

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

(3) A coroner acting pursuant to this section shall not authorize the removal of a part from a body within the coroner's custody if the coroner, or any deputy or agent of the coroner, derives or may derive any direct or indirect financial benefit relative to the removal, donation or use of the part.

[39-3417, added 2007, ch. 30, sec. 2, p. 71.]

39-3418. OTHER PROHIBITED ACTS. A person that, in order to obtain a 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 commits a felony and upon conviction is subject to a fine not exceeding fifty thousand dollars (\$50,000) or imprisonment not exceeding five (5) years, or both such fine and imprisonment.

[39-3418, added 2007, ch. 30, sec. 2, p. 71.]

39-3419. IMMUNITY. (1) 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, criminal prosecution or administrative proceeding.

(2) 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.

(3) 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 section [39-3409](#) (1) (b), (c), (d), (e), (f), (g) or (h), Idaho Code, relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

[39-3419, added 2007, ch. 30, sec. 2, p. 71.]

39-3420. LAW GOVERNING VALIDITY -- CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT -- PRESUMPTION OF VALIDITY. (1) A document of gift is valid if executed in accordance with:

(a) This chapter;

(b) The laws of the state or country where it was executed; or

(c) 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.

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

(3) 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 was revoked.

[39-3420, added 2007, ch. 30, sec. 2, p. 71.]

39-3421. DONOR REGISTRY. (1) The Idaho transportation department shall cooperate with a person that administers any donor registry that this state establishes, contracts for, or recognizes for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift.

(2) A donor registry must:

(a) Allow a donor or other person authorized under section [39-3404](#), Idaho Code, to include on the donor registry a statement or symbol that the donor has made, amended or revoked an anatomical gift;

(b) Be accessible to a procurement organization to allow it to obtain relevant information on the donor registry 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; and

(c) Be accessible for purposes of paragraphs (a) and (b) of this subsection seven (7) days a week on a twenty-four (24) hour basis.

(3) Personally identifiable information on a donor registry about a donor or prospective donor shall not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift.

(4) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with the state. Any such registry must comply with subsections (2) and (3) of this section.

[39-3421, added 2007, ch. 30, sec. 2, p. 72.]

39-3422. EFFECT OF ANATOMICAL GIFT ON ADVANCE HEALTH CARE DIRECTIVE. (1) In this section:

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

(b) "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.

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

(2) 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 must 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 [39-3409](#), Idaho Code. Before resolution of

the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

[39-3422, added 2007, ch. 30, sec. 2, p. 72; am. 2009, ch. 176, sec. 1, p. 556.]

39-3423. COOPERATION BETWEEN CORONER AND PROCUREMENT ORGANIZATION. (1) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research or education.

(2) A part may 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 and the removal will not interfere with any autopsy or investigation. The body of a decedent under the jurisdiction of the coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

[39-3423, added 2007, ch. 30, sec. 2, p. 73.]

39-3424. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[39-3424, added 2007, ch. 30, sec. 2, p. 73.]

39-3425. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit or supersede section 101(a) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

[39-3425, added 2007, ch. 30, sec. 2, p. 73.]