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**HOUSE BILL NO. 154**

Offered January 8, 2014

Prefiled December 20, 2013

*A BILL to amend and reenact §§ 32.1-127, 32.1-127.1, 32.1-291.2, 32.1-291.4, 32.1-291.5, 32.1-291.6, 32.1-291.11, 32.1-291.12, 32.1-291.14, 32.1-291.17, 32.1-291.18, 32.1-291.21, 32.1-292.2, 46.2-342, 54.1-2984, 54.1-2986, 54.1-2986.1, and 54.1-2995 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 32.1-291.3:1, 32.1-291.3:2, and 32.1-291.3:3; and to repeal §§ 32.1-291.1, 32.1-291.3, 32.1-291.7 through 32.1-291.10, and 32.1-291.24 of the Code of Virginia, relating to presumed consent to organ donation.*

Patron—Bell, Richard P.

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-127, 32.1-127.1, 32.1-291.2, 32.1-291.4, 32.1-291.5, 32.1-291.6, 32.1-291.11, 32.1-291.12, 32.1-291.14, 32.1-291.17, 32.1-291.18, 32.1-291.21, 32.1-292.2, 46.2-342, 54.1-2984, 54.1-2986, 54.1-2986.1, and 54.1-2995 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 32.1-291.3:1, 32.1-291.3:2, and 32.1-291.3:3 as follows:**

**§ 32.1-127. Regulations.**

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

**B. Such regulations:**

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the life safety of its patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. For purposes of this ~~paragraph~~ *subdivision*, facilities in which five or more first trimester abortions per month are performed shall be classified as a category of "hospital";

2. Shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each hospital which operates or holds itself out as operating an emergency service;

3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Centers for Medicare & Medicaid Services (CMS), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in CMS regulations for routine contact, whereby the provider's designated organ procurement organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to ~~inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate~~ *(a) identify individuals who have registered a refusal to make an anatomical gift and revocation of presumed consent to an anatomical gift and (b) inform the family of individuals who have not filed a refusal to make an anatomical gift and revocation of presumed consent to an anatomical gift about the organ donation*

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59 *process.* The individual making contact with the family shall have completed a course in the  
60 methodology for approaching potential donor families and ~~requesting~~ *discussing* organ or tissue donation  
61 that ~~(a)~~ (1) is offered or approved by the organ procurement organization and designed in conjunction  
62 with the tissue and eye bank community and ~~(b)~~ (2) encourages discretion and sensitivity according to  
63 the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work  
64 cooperatively with the designated organ procurement organization in educating the staff responsible for  
65 contacting the organ procurement organization's personnel on donation issues, the proper review of death  
66 records to improve identification of potential donors, and the proper procedures for maintaining potential  
67 donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place.  
68 This process shall be followed, without exception, unless the family of the relevant decedent or patient  
69 has expressed opposition to organ donation, the chief administrative officer of the hospital or his  
70 designee knows of such opposition, and no donor card or other relevant document, such as an advance  
71 directive, can be found;

72 5. Shall require that each hospital that provides obstetrical services establish a protocol for admission  
73 or transfer of any pregnant woman who presents herself while in labor;

74 6. Shall also require that each licensed hospital develop and implement a protocol requiring written  
75 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall  
76 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother  
77 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,  
78 treatment services, comprehensive early intervention services for infants and toddlers with disabilities  
79 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.  
80 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to  
81 the extent possible, the father of the infant and any members of the patient's extended family who may  
82 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant  
83 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to  
84 federal law restrictions, the community services board of the jurisdiction in which the woman resides to  
85 appoint a discharge plan manager. The community services board shall implement and manage the  
86 discharge plan;

87 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant  
88 for admission the home's or facility's admissions policies, including any preferences given;

89 8. Shall require that each licensed hospital establish a protocol relating to the rights and  
90 responsibilities of patients which shall include a process reasonably designed to inform patients of such  
91 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to  
92 patients on admission, shall be based on Joint Commission on Accreditation of Healthcare Organizations'  
93 standards;

94 9. Shall establish standards and maintain a process for designation of levels or categories of care in  
95 neonatal services according to an applicable national or state-developed evaluation system. Such  
96 standards may be differentiated for various levels or categories of care and may include, but need not be  
97 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

98 10. Shall require that each nursing home and certified nursing facility train all employees who are  
99 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting  
100 procedures and the consequences for failing to make a required report;

101 11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or  
102 hospital policies and procedures, to accept emergency telephone and other verbal orders for medication  
103 or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute  
104 to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable  
105 period of time not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and  
106 regulations or hospital policies and procedures, by the person giving the order, or, when such person is  
107 not available within the period of time specified, co-signed by another physician or other person  
108 authorized to give the order;

109 12. Shall require, unless the vaccination is medically contraindicated or the resident declines the offer  
110 of the vaccination, that each certified nursing facility and nursing home provide or arrange for the  
111 administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal  
112 vaccination, in accordance with the most recent recommendations of the Advisory Committee on  
113 Immunization Practices of the Centers for Disease Control and Prevention;

114 13. Shall require that each nursing home and certified nursing facility register with the Department of  
115 State Police to receive notice of the registration or reregistration of any sex offender within the same or  
116 a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914;

117 14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission,  
118 whether a potential patient is a registered sex offender, if the home or facility anticipates the potential  
119 patient will have a length of stay greater than three days or in fact stays longer than three days;

120 15. Shall require that each licensed hospital include in its visitation policy a provision allowing each

adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy including, but not limited to, those related to the patient's medical condition and the number of visitors permitted in the patient's room simultaneously;

16. Shall require that each nursing home and certified nursing facility shall, upon the request of the facility's family council, send notices and information about the family council mutually developed by the family council and the administration of the nursing home or certified nursing facility, and provided to the facility for such purpose, to the listed responsible party or a contact person of the resident's choice up to six times per year. Such notices may be included together with a monthly billing statement or other regular communication. Notices and information shall also be posted in a designated location within the nursing home or certified nursing facility; and

17. Shall require that each nursing home and certified nursing facility maintain liability insurance coverage in a minimum amount of \$1 million, and professional liability coverage in an amount at least equal to the recovery limit set forth in § 8.01-581.15, to compensate patients or individuals for injuries and losses resulting from the negligent or criminal acts of the facility. Failure to maintain such minimum insurance shall result in revocation of the facility's license.

C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and certified nursing facilities may operate adult day care centers.

D. All facilities licensed by the Board pursuant to this article which provide treatment or care for hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to be contaminated with an infectious agent, those hemophiliacs who have received units of this contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot which is known to be contaminated shall notify the recipient's attending physician and request that he notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail, return receipt requested, each recipient who received treatment from a known contaminated lot at the individual's last known address.

**§ 32.1-127.1. Immunity from liability for routine referral for organ and tissue donation.**

Any chief administrative officer of a hospital or his designee who administers the routine referral required by § 32.1-127 and any representative of any organ procurement organization or eye or tissue bank who receives notice of a death or imminent death, determines the suitability of the decedent or patient for organ donation, ~~makes contact with the family of a decedent or patient to request the donation of organs, tissues or eyes;~~ or assists or performs the removal of any donated organs, tissues or eyes shall be immune from civil liability for any act, decision, or omission or statement made in accordance with the provisions of § 32.1-127, the regulations of the Board, and the provisions of the Health Care Financing Administration's regulations on routine referral and organ donation, unless he was grossly negligent or acted in bad faith or with malicious intent.

**§ 32.1-291.2. Definitions.**

As used in this Act, unless the context requires otherwise:

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

"Agent" means an individual:

1. Authorized to make health-care decisions on the principal's behalf by a power of attorney for health care; or

2. Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

"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.

"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 Act, a fetus.

"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 whom an anatomical gift could pass under § 32.1-291.11.

"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.~~

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

"Donor registry" means a database that contains records of anatomical gifts.

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

"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 and that is a member of the Virginia Transplant Council, accredited by the Eye Bank Association of America or the American Association of Tissue Banks and operating in the Commonwealth of Virginia.

"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, except when the guardian ad litem is authorized by a court to consent to donation.

"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.

"Identification card" means an identification card issued by the Virginia Department of Motor Vehicles.

"Know" means to have actual knowledge.

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

"Organ procurement organization" means a person designated by the Secretary of the United States U.S. Department of Health and Human Services as an organ procurement organization that is also a member of the Virginia Transplant Council.

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

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

"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.

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

"Procurement organization" means an eye bank, organ procurement organization, or tissue bank that is a member of the Virginia Transplant Council.

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

"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.

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

"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.

"Refusal" means a record created ~~under § 32.1-291.7~~ pursuant to § 32.1-291.3:2 that expressly states ~~an intent to bar other persons from making the individual's refusal to make~~ an anatomical gift of an individual's body or part.

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

1. To execute or adopt a tangible symbol; or

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

"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.

"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.

"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.

"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 and that is a member of the Virginia Transplant Council, accredited by the American Association of Tissue Banks, and operating in the Commonwealth of Virginia.

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

**§ 32.1-291.3:1. Presumption of anatomical gift.**

*Every resident of Virginia shall be presumed to have made an anatomical gift of his whole body, unless the individual has refused to make an anatomical gift pursuant to § 32.1-291.3:2. Such anatomical gift shall become effective upon the individual's death without the need to obtain the consent of any survivor.*

**§ 32.1-291.3:2. Refusal to make anatomical gift.**

A. Any individual who is an adult who is not described in clause (i) or (ii) of subsection B, is an emancipated minor, or is authorized under state law to apply for a driver's license because he is at least 15 years and six months of age may refuse to make an anatomical gift by (i) signing a record requesting that a statement or symbol indicating that the individual has refused to make an anatomical gift be included on a donor registry or (ii) authorizing a statement or symbol indicating that the individual has refused to make an anatomical gift be imprinted on the individual's driver's license or identification card. If an individual is physically unable to sign a writing stating his refusal, another individual acting at the direction of the individual may sign such writing, provided such writing is witnessed and signed by at least two adults, at least one of whom is a disinterested witness, and includes a statement indicating that it is so signed and witnessed.

B. If an individual is (i) an adult who has appointed an agent under a power of attorney for health care or other record or (ii) an adult for whom a guardian has been appointed, the agent or guardian may refuse to make an anatomical gift of the individual's body or part by any method described in subsection A. However, no agent shall refuse to make an anatomical gift of the individual's body or part if the power of attorney for health care or other record prohibits the agent from doing so.

C. The parent or guardian of a minor other than a minor described in subsection A may refuse to make an anatomical gift of the minor's body or part by any method described in subsection A.

**§ 32.1-291.3:3. Revoking refusal to make anatomical gift.**

A. An individual who has made a refusal pursuant to § 32.1-291.3:2 may revoke his refusal by (i) submitting to the donor registry a record signed by the individual revoking his prior refusal and requesting that a statement or symbol indicating that he has refused to make an anatomical gift be removed from the donor registry, or (ii) authorizing the removal from his driver's license or identification card of any statement or symbol indicating that he has refused to make an anatomical gift. If an individual is physically unable to sign a writing stating the his revocation of his prior refusal, another individual acting at the direction of the individual may sign such writing, provided such writing is witnessed and signed by at least two adults, at least one of whom is a disinterested witness, and includes a statement indicating that it is so signed and witnessed.

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

**§ 32.1-291.4. Who may make a limited anatomical gift.**

Subject to § 32.1-291.8, ~~an~~ Any person who is (i) an adult, (ii) an emancipated minor, (iii) a minor who is authorized under state law to apply for a driver's license because he is at least 15 years and six months of age, (iv) an agent of a person pursuant to a power of attorney for health care or other record, (v) the parent of an unemancipated minor, or (vi) the person's guardian, and who has refused to make an anatomical gift pursuant to § 32.1-291.3:2 may make a limited 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 § 32.1-291.5 by:

1. The donor, if the donor is an adult or if the donor is a minor and is:
  - a. Emancipated; or
  - b. Authorized under state law to apply for a driver's license because the donor is at least 15 years and six months of age;
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.

**§ 32.1-291.5. Manner of making a limited anatomical gift .**

A. A donor may make ~~an~~ a limited anatomical gift:

1. By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card ~~In a signed writing, witnessed and signed by at least two adults, setting forth his intent to make a limited anatomical gift and the nature of the gift;~~

2. In a will; or

3. During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults; or

4. As provided in subsection B.

B. A donor or other person authorized to make an anatomical gift under § 32.1-291.4 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall:

1. Be witnessed by at least two adults, who have signed at the request of the donor or the other

305 person; and

306 2. State that it has been signed and witnessed as provided in subdivision 1.

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

309 D. ~~An~~ B. A *limited* anatomical gift made by will takes effect upon the donor's death whether or not  
310 the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

311 **§ 32.1-291.6. Amending or revoking a limited anatomical gift.**

312 A. ~~Subject to § 32.1-291.8,~~ a A donor or other person authorized to make ~~an~~ a *limited* anatomical  
313 gift ~~under of a donor's body or part pursuant to~~ § 32.1-291.4 may amend or revoke ~~an anatomical~~ gift  
314 by:

315 1. A record signed by:

316 a. The donor;

317 b. The other person *authorized to make a limited anatomical gift on behalf of the donor*; or

318 c. Subject to subsection B, another individual acting at the direction of the donor or the other person  
319 if the donor or other person is physically unable to sign; or

320 2. Later-executed document of gift that amends or revokes a previous *limited* anatomical gift or  
321 portion of ~~an~~ a *limited* anatomical gift, either expressly or by inconsistency.

322 B. A record signed pursuant to subdivision A 1 c shall:

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

325 2. State that it has been signed and witnessed as provided in subdivision 1.

326 C. ~~Subject to § 32.1-291.8,~~ a A donor or other person authorized to make ~~an~~ a *limited* anatomical gift  
327 ~~under of the donor's body or part pursuant to~~ § 32.1-291.4 may revoke ~~an~~ a *limited* anatomical gift by  
328 the destruction or cancellation of the document of gift, or the portion of the document of gift used to  
329 make the gift, with the intent to revoke the gift.

330 D. A donor may amend or revoke ~~an~~ a *limited* anatomical gift that was not made in a will by any  
331 form of communication during a terminal illness or injury addressed to at least two adults, at least one  
332 of whom is a disinterested witness.

333 E. A donor who makes ~~an~~ a *limited* anatomical gift in a will may amend or revoke the gift in the  
334 manner provided for amendment or revocation of wills or as provided in subsection A.

335 F. *If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably*  
336 *available may revoke or amend a limited anatomical gift of the donor's body or part.*

337 **§ 32.1-291.11. Persons that may receive limited anatomical gift; purpose of anatomical gift.**

338 A. ~~An~~ A *limited* anatomical gift made pursuant to § 32.1-291.5 may be made to the following  
339 persons named in the document of gift:

340 1. A hospital; accredited medical school, dental school, college, or university; organ procurement  
341 organization; or other appropriate person authorized by the Virginia Transplant Council, for research or  
342 education;

343 2. Subject to subsection B, an individual designated by the person making the *limited* anatomical gift  
344 if the individual is the recipient of the part; or

345 3. An eye bank or tissue bank.

346 B. If ~~an~~ a *limited* anatomical gift to an individual under subdivision A 2 cannot be transplanted into  
347 the individual, the part passes in accordance with subsection G in the absence of an express, contrary  
348 indication by the person making the *limited* anatomical gift.

349 C. If ~~an~~ a *limited* anatomical gift of one or more specific parts or of all parts is made in a document  
350 of gift that does not name a person described in subsection A but identifies the purpose for which ~~an~~ a  
351 *limited* anatomical gift may be used, the following rules apply:

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

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

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

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

360 D. For the purpose of subsection C, if there is more than one purpose of ~~an~~ a *limited* anatomical gift  
361 set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used  
362 for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the  
363 gift may be used for research or education.

364 E. If ~~an~~ a *limited* anatomical gift of one or more specific parts is made in a document of gift that  
365 does not name a person described in subsection A and does not identify the purpose of the gift, the gift  
366 may be used for transplantation, therapy, research and education, and the gift passes in accordance with

subsection G. The gift shall be used first 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.

F. If a document of gift specifies only a general intent to make ~~an~~ *a limited* anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used for transplantation, therapy, research and education and the gift passes in accordance with subsection G. The gift shall be used first 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.

G. For purposes of subsections B, E, and F the following rules apply:

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

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

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

H. ~~An~~ *A limited* anatomical gift of an organ for transplantation, therapy, research or education other than ~~an~~ *a limited* anatomical gift under subdivision A 2, passes to the organ procurement organization as custodian of the organ.

I. If ~~an~~ *a limited* anatomical gift does not pass pursuant to subsections A through H 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 surviving spouse, next of kin or other person under obligation to dispose of the body or part.

J. A person may not accept ~~an~~ *a limited* anatomical gift if the person knows that the gift was not effectively made under § 32.1-291.5 ~~or 32.1-291.10~~ ~~or if the person knows that the decedent made a refusal under § 32.1-291.7 that was not revoked.~~ For purposes of this subsection, if a person knows that ~~an~~ *a limited* 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~~ *a limited* anatomical gift on the same document of gift.

K. Except as otherwise provided in subdivision A 2, nothing in this Act affects the allocation of organs for transplantation therapy, research or education.

#### **§ 32.1-291.12. Search and notification.**

A. The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or whose death is imminent for a document ~~of gift~~ or other information identifying the individual as a ~~donor~~ or as an individual who ~~made a refusal~~ *registered a refusal to make an anatomical gift*:

1. A law-enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

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

B. If a ~~document of gift~~ or a refusal to make an anatomical gift is located by the search required by subdivision A 1 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~~ *so notify* the hospital.

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

#### **§ 32.1-291.14. Rights and duties of procurement organization and others.**

A. When a hospital refers an individual who is dead or whose death is imminent to a procurement organization, the organization shall make a reasonable search of the records of the Virginia Department of Motor Vehicles and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has ~~made refused to make~~ *an anatomical gift*.

B. A procurement organization shall be allowed reasonable access to information in the records of the Virginia Department of Motor Vehicles to ascertain whether an individual who is dead or whose death is imminent is a ~~donor~~ *has refused to make an anatomical gift*.

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

D. Unless prohibited by law other than this Act, at any time after a donor's death, the person to which a part passes under § 32.1-291.11 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

E. Unless prohibited by law other than this Act, an examination under subsection C or D may include an examination of all medical and dental records of the donor or prospective donor.

428 F. Upon the death of a minor who was a donor or had signed a refusal *to make an anatomical gift*,  
429 unless a procurement organization knows the minor is emancipated, the procurement organization shall  
430 conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to  
431 revoke ~~or amend~~ the anatomical gift or revoke the refusal.

432 G. Upon referral by a hospital under subsection A, a procurement organization shall make a  
433 reasonable search for any person listed in ~~§ 32.1-291.9~~ having priority to make an anatomical gift on  
434 behalf of a prospective donor. If a procurement organization receives information that an anatomical gift  
435 to any other person was made, amended, or revoked, it shall promptly advise the other person of all  
436 relevant information.

437 H.G. Subject to subsection I of § 32.1-291.11 and § 32.1-291.23, the rights of the person to which a  
438 part passes under § 32.1-291.11 are superior to the rights of all others with respect to the part. The  
439 person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document  
440 of gift and this Act, a person that accepts an anatomical gift of an entire body may allow embalming,  
441 burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which  
442 the part passes under § 32.1-291.11, upon the death of the donor and before embalming, burial, or  
443 cremation, shall cause the part to be removed without unnecessary mutilation.

444 H.H. Neither the physician who attends the decedent at death nor the physician who determines the  
445 time of the decedent's death may participate in the procedures for removing or transplanting a part from  
446 the decedent.

447 H.I. A donated part from the body of a donor may be removed only by a physician or technician. The  
448 physician or technician performing the removal shall be qualified to remove the donated part from the  
449 body. For the purposes of this section, "qualified" means:

450 1. If the part is an organ, a physician or technician who is authorized by the appropriate organ  
451 procurement organization;

452 2. If the part is an eye, a physician or technician who is approved by an eye bank as qualified to  
453 perform the act of eye recovery; or

454 3. If the part is tissue, any physician or technician who is approved by LifeNet as qualified to  
455 perform the act of tissue recovery.

456 An organ procurement organization may screen, test, and recover eyes and tissue on behalf of an eye  
457 bank or tissue bank. Any person authorized by this subsection to recover organs, tissues or eyes may  
458 draw blood from the donor and order such tests as may be appropriate to protect his health and the  
459 health of the recipients of the organs, tissues or eyes.

460 **§ 32.1-291.17. Falsification, etc. of document of gift; penalty.**

461 A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or  
462 obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal *to make*  
463 *an anatomical gift* is guilty of a Class 4 felony.

464 **§ 32.1-291.18. Immunity.**

465 A. A person that acts in accordance with this Act or with the applicable anatomical gift law of  
466 another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal  
467 prosecution, or administrative proceeding.

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

470 C. ~~In determining whether an anatomical gift has been made, amended, or revoked under this Act, a~~  
471 ~~person may rely upon representations of an individual listed in subdivisions A 3, A 4, A 5, A 6, A 7, A~~  
472 ~~8, or A 9 of § 32.1-291.9 relating to the individual's relationship to the donor or prospective donor~~  
473 ~~unless the person knows that the representation is untrue.~~

474 **§ 32.1-291.21. Effect of anatomical gift on advance health-care directive.**

475 A. In this section:

476 "Advance health-care directive" means an advance directive executed by a prospective donor as  
477 provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

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

480 "Health care decision" means any decision regarding the health care of the prospective donor.

481 B. If a prospective donor has a declaration or an advance health-care directive and the terms of the  
482 declaration or directive and the express or implied terms of a potential anatomical gift are in conflict  
483 with regard to the administration of measures necessary to ensure the medical suitability of a part for  
484 transplantation or therapy, the prospective donor's attending physician and the prospective donor shall  
485 confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent  
486 acting under the prospective donor's declaration or directive, or, if there is no declaration or directive, or  
487 the agent is not reasonably available, another person authorized by law other than this Act, to make  
488 health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict.  
489 The conflict shall be resolved as expeditiously as possible. Information relevant to the resolution of the



conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor ~~under § 32.1-291.9.~~ Before resolution of the conflict, measures necessary to ensure the medical suitability of an organ for transplantation or therapy 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.

**§ 32.1-292.2. The Virginia Donor Registry.**

A. In order to save lives by reducing the shortage of organs and tissues for transplantation and to implement cost savings for patients and various state agencies by eliminating needless bureaucracy, there is hereby established the Virginia Donor Registry (hereinafter referred to as the Registry), which shall be created, compiled, operated, maintained, and modified as necessary by the Virginia Transplant Council in accordance with the regulations of the Board of Health and the administration of the Department of Health. At its sole discretion, the Virginia Transplant Council may contract with a third party or parties to create, compile, operate, maintain or modify the Registry. Pertinent information on all Virginians who have indicated a willingness to donate organs and tissues ~~in accordance with the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.)~~ *or who have indicated a refusal to donate organs and tissues pursuant to § 32.1-291.3:2* shall be compiled, maintained, and modified as necessary in the Registry by the Virginia Transplant Council.

B. The Registry and all information therein shall be confidential and subject to access only by personnel of the Department of Health and designated organ procurement organizations, eye banks, and tissue banks, operating in or serving Virginia that are members of the Virginia Transplant Council, for the purpose of identifying and determining the suitability of a potential donor according to the provisions of subdivision B 4 of § 32.1-127 or subsection H of § 46.2-342.

C. The purpose of the Registry shall include, but not be limited to:

1. Providing a means of recovering an anatomical gift for transplantation, therapy, education or research as authorized by ~~the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.)~~ *this article* and subsection H of § 46.2-342; and

2. *Providing a means of identifying individuals who have refused to make an anatomical gift pursuant to § 32.1-291.3:3; and*

3. Collecting data to develop and evaluate the effectiveness of educational initiatives promoting organ, eye, and tissue donation that are conducted or coordinated by the Virginia Transplant Council or its members.

D. The Board, in consultation with the Virginia Transplant Council, shall promulgate regulations necessary to create, compile, operate, maintain, modify as necessary, and administer the Virginia Donor Registry. The regulations shall include, but not be limited to:

1. Recording the data subject's full name, address, sex, birth date, age, driver's license number or unique identifying number, and other pertinent identifying personal information;

2. Authorizing the Virginia Transplant Council to analyze Registry data under research protocols that are designed to identify and assess the effectiveness of mechanisms to promote and increase organ, eye, and tissue donation within the Commonwealth; and

3. Providing that any Virginian whose name has been placed in the registry may have his name deleted by filing an appropriate form with the Virginia Transplant Council or in accordance with ~~the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.)~~ *this article* or subsection I of § 46.2-342.

**§ 46.2-342. What license to contain; organ donor information; Uniform Donor Document.**

A. Every license issued under this chapter shall bear:

1. For licenses issued or renewed on or after July 1, 2003, a license number which shall be assigned by the Department to the licensee and shall not be the same as the licensee's social security number;

2. A photograph of the licensee;

3. The licensee's full name, year, month, and date of birth;

4. The licensee's address, subject to the provisions of subsection B of this section;

5. A brief description of the licensee for the purpose of identification;

6. A space for the signature of the licensee; and

7. Any other information deemed necessary by the Commissioner for the administration of this title.

No abbreviated names or nicknames shall be shown on any license.

B. At the option of the licensee, the address shown on the license may be either the post office box, business, or residence address of the licensee, provided such address is located in Virginia. However, regardless of which address is shown on the license, the licensee shall supply the Department with his residence address, which shall be an address in Virginia. This residence address shall be maintained in the Department's records. Whenever the licensee's address shown either on his license or in the Department's records changes, he shall notify the Department of such change as required by § 46.2-324.

C. The Department may contract with the United States Postal Service or an authorized agent to use the National Change of Address System for the purpose of obtaining current address information for a

551 person whose name appears in customer records maintained by the Department. If the Department  
552 receives information from the National Change of Address System indicating that a person whose name  
553 appears in a Department record has submitted a permanent change of address to the Postal Service, the  
554 Department may then update its records with the mailing address obtained from the National Change of  
555 Address System.

556 D. The license shall be made of a material and in a form to be determined by the Commissioner.

557 E. Licenses issued to persons less than 21 years old shall be immediately and readily distinguishable  
558 from those issued to persons 21 years old or older. Distinguishing characteristics shall include unique  
559 design elements of the document and descriptors within the photograph area to identify persons who are  
560 at least 15 years old but less than 21 years old. These descriptors shall include the month, day, and year  
561 when the person will become 21 years old.

562 F. The Department shall establish a method by which an applicant for a driver's license or an  
563 identification card may designate his ~~willingness~~ *refusal* to make an anatomical gift for transplantation,  
564 therapy, research, and education as provided in Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title  
565 32.1 and shall cooperate with the Virginia Transplant Council to ensure that such method is designed to  
566 encourage organ, tissue, and eye donation with a minimum of effort on the part of the donor and the  
567 Department.

568 G. If an applicant designates his ~~willingness~~ *refusal* to be a donor pursuant to subsection F, the  
569 Department ~~may~~ *shall* make a notation of this designation on his license or card and shall make a  
570 notation of this designation in his driver record.

571 H. ~~The donor designation~~ *Inclusion of a designation indicating an individual's refusal to be a donor*  
572 authorized in subsection G shall be sufficient legal authority ~~for~~ *to prohibit* the removal, following  
573 death, of the subject's organs or tissues ~~without additional authority from the donor, or his family or~~  
574 *estate other than in accordance with a limited anatomical gift made pursuant to § 32.1-291.6.* No family  
575 member, guardian, agent named pursuant to an advance directive or person responsible for the decedent's  
576 estate shall refuse to honor the ~~donor~~ designation or, in any way, seek to avoid honoring the donor  
577 designation.

578 I. The ~~donor~~ designation provided pursuant to subsection F may be rescinded by notifying the  
579 Department. In addition, the Department shall remove from the driver's license or identification card any  
580 ~~donor~~ designation made pursuant to subsection F, if, at the time the applicant renews or replaces the  
581 license or identification card, the applicant does not again designate his ~~willingness~~ *refusal* to be a donor  
582 pursuant to subsection F.

583 J. A minor may make a ~~donor~~ designation pursuant to subsection F without the consent of a parent  
584 or legal guardian as authorized by the Revised Uniform Anatomical Gift Act (~~§ 32.1-291.1 et seq.~~)  
585 *§ 32.1-291.3:2.*

586 K. The Department shall provide a method by which an applicant conducting a Department of Motor  
587 Vehicles transaction using electronic means may make a voluntary contribution to the Virginia Donor  
588 Registry and Public Awareness Fund (Fund) established pursuant to § 32.1-297.1. The Department shall  
589 inform the applicant of the existence of the Fund and also that contributing to the Fund is voluntary.

590 L. The Department shall collect all moneys contributed pursuant to subsection K and transmit the  
591 moneys on a regular basis to the Virginia Transplant Council, which shall credit the contributions to the  
592 Fund.

593 M. When requested by the applicant, and upon presentation of a signed statement by a licensed  
594 physician confirming the applicant's condition, the Department shall indicate on the applicant's driver's  
595 license that the applicant is (i) an insulin-dependent diabetic, or (ii) hearing or speech impaired.

596 N. In the absence of gross negligence or willful misconduct, the Department and its employees shall  
597 be immune from any civil or criminal liability in connection with the making of or failure to make a  
598 notation of ~~donor~~ *a designation pursuant to subsection F* on any license or card or in any person's  
599 driver record.

600 O. Notwithstanding the foregoing provisions of this section, the Department shall continue to use the  
601 uniform donor document, as formerly set forth in subsection F, for organ donation designation until such  
602 time as a new method is fully implemented, which shall be no later than July 1, 1994. Any such  
603 uniform donor document shall, when properly executed, remain valid and shall continue to be subject to  
604 all conditions for execution, delivery, amendment, and revocation as set out in Article 2 (§ 32.1-289.2 et  
605 seq.) of Chapter 8 of Title 32.1.

606 P. The Department shall, in coordination with the Virginia Transplant Council, prepare an organ  
607 donor information brochure describing the organ donor program *and an individual's right to refuse to*  
608 *make an anatomical gift,* and providing instructions for completion of the uniform donor document  
609 information describing the bone marrow donation program and instructions for registration in the  
610 National Bone Marrow Registry. The Department shall include a copy of such brochure with every  
611 driver's license renewal notice or application mailed to licensed drivers in Virginia.

612 **§ 54.1-2984. Suggested form of written advance directives.**

An advance directive executed pursuant to this article may, but need not, be in the following form:

#### ADVANCE MEDICAL DIRECTIVE

I, . . . . ., willingly and voluntarily make known my wishes in the event that I am incapable of making an informed decision, as follows:

I understand that my advance directive may include the selection of an agent as well as set forth my choices regarding health care. The term "health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

The phrase "incapable of making an informed decision" means unable to understand the nature, extent and probable consequences of a proposed health care decision or unable to make a rational evaluation of the risks and benefits of a proposed health care decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way.

The determination that I am incapable of making an informed decision shall be made by my attending physician and a capacity reviewer, if certification by a capacity reviewer is required by law, after a personal examination of me and shall be certified in writing. Such certification shall be required before health care is provided, continued, withheld or withdrawn, before any named agent shall be granted authority to make health care decisions on my behalf, and before, or as soon as reasonably practicable after, health care is provided, continued, withheld or withdrawn and every 180 days thereafter while the need for health care continues.

If, at any time, I am determined to be incapable of making an informed decision, I shall be notified, to the extent I am capable of receiving such notice, that such determination has been made before health care is provided, continued, withheld, or withdrawn. Such notice shall also be provided, as soon as practical, to my named agent or person authorized by § 54.1-2986 to make health care decisions on my behalf. If I am later determined to be capable of making an informed decision by a physician, in writing, upon personal examination, any further health care decisions will require my informed consent.

(SELECT ANY OR ALL OF THE OPTIONS BELOW.)

OPTION I: APPOINTMENT OF AGENT (CROSS THROUGH OPTIONS I AND II BELOW IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

I hereby appoint . . . . . (primary agent), of . . . . . (address and telephone number), as my agent to make health care decisions on my behalf as authorized in this document. If . . . . . (primary agent) is not reasonably available or is unable or unwilling to act as my agent, then I appoint . . . . . (successor agent), of . . . . . (address and telephone number), to serve in that capacity.

I hereby grant to my agent, named above, full power and authority to make health care decisions on my behalf as described below whenever I have been determined to be incapable of making an informed decision. My agent's authority hereunder is effective as long as I am incapable of making an informed decision.

In exercising the power to make health care decisions on my behalf, my agent shall follow my desires and preferences as stated in this document or as otherwise known to my agent. My agent shall be guided by my medical diagnosis and prognosis and any information provided by my physicians as to the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall not make any decision regarding my health care which he knows, or upon reasonable inquiry ought to know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent cannot determine what health care choice I would have made on my own behalf, then my agent shall make a choice for me based upon what he believes to be in my best interests.

OPTION II: POWERS OF MY AGENT (CROSS THROUGH ANY LANGUAGE YOU DO NOT WANT AND ADD ANY LANGUAGE YOU DO WANT.)

The powers of my agent shall include the following:

A. To consent to or refuse or withdraw consent to any type of health care, treatment, surgical procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to consent to the administration of dosages of pain-relieving medication in excess of recommended dosages in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or of inadvertently hastening my death;

B. To request, receive, and review any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records, and to consent to the disclosure of this information;

C. To employ and discharge my health care providers;

674 D. To authorize my admission to or discharge (including transfer to another facility) from any  
675 hospital, hospice, nursing home, assisted living facility or other medical care facility. If I have  
676 authorized admission to a health care facility for treatment of mental illness, that authority is stated  
677 elsewhere in this advance directive;

678 E. To authorize my admission to a health care facility for the treatment of mental illness for no more  
679 than 10 calendar days provided I do not protest the admission and a physician on the staff of or  
680 designated by the proposed admitting facility examines me and states in writing that I have a mental  
681 illness and I am incapable of making an informed decision about my admission, and that I need  
682 treatment in the facility; and to authorize my discharge (including transfer to another facility) from the  
683 facility;

684 F. To authorize my admission to a health care facility for the treatment of mental illness for no more  
685 than 10 calendar days, even over my protest, if a physician on the staff of or designated by the  
686 proposed admitting facility examines me and states in writing that I have a mental illness and I am  
687 incapable of making an informed decision about my admission, and that I need treatment in the facility;  
688 and to authorize my discharge (including transfer to another facility) from the facility. [My physician or  
689 licensed clinical psychologist hereby attests that I am capable of making an informed decision and that I  
690 understand the consequences of this provision of my advance directive:  
691 \_\_\_\_\_];

692 G. To authorize the specific types of health care identified in this advance directive [specify  
693 cross-reference to other sections of directive] even over my protest. [My physician or licensed clinical  
694 psychologist hereby attests that I am capable of making an informed decision and that I understand the  
695 consequences of this provision of my advance directive:  
696 \_\_\_\_\_];

697 H. To continue to serve as my agent even in the event that I protest the agent's authority after I have  
698 been determined to be incapable of making an informed decision;

699 I. To authorize my participation in any health care study approved by an institutional review board or  
700 research review committee according to applicable federal or state law that offers the prospect of direct  
701 therapeutic benefit to me;

702 J. To authorize my participation in any health care study approved by an institutional review board  
703 or research review committee pursuant to applicable federal or state law that aims to increase scientific  
704 understanding of any condition that I may have or otherwise to promote human well-being, even though  
705 it offers no prospect of direct benefit to me;

706 K. To make decisions regarding visitation during any time that I am admitted to any health care  
707 facility, consistent with the following directions: . . . . .; and

708 L. To take any lawful actions that may be necessary to carry out these decisions, including the  
709 granting of releases of liability to medical providers. Further, my agent shall not be liable for the costs  
710 of health care pursuant to his authorization, based solely on that authorization.

711 **OPTION III: HEALTH CARE INSTRUCTIONS**

712 (CROSS THROUGH PARAGRAPHS A AND/OR B IF YOU DO NOT WANT TO GIVE  
713 ADDITIONAL SPECIFIC INSTRUCTIONS ABOUT YOUR HEALTH CARE.)

714 A. I specifically direct that I receive the following health care if it is medically appropriate under the  
715 circumstances as determined by my attending physician: . . . . .

716 B. I specifically direct that the following health care not be provided to me under the following  
717 circumstances (you may specify that certain health care not be provided under any circumstances): . . .  
718 . . . . .

719 **OPTION IV: END OF LIFE INSTRUCTIONS**

720 (CROSS THROUGH THIS OPTION IF YOU DO NOT WANT TO GIVE INSTRUCTIONS  
721 ABOUT YOUR HEALTH CARE IF YOU HAVE A TERMINAL CONDITION.)

722 If at any time my attending physician should determine that I have a terminal condition where the  
723 application of life-prolonging procedures - including artificial respiration, cardiopulmonary resuscitation,  
724 artificially administered nutrition, and artificially administered hydration - would serve only to artificially  
725 prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be  
726 permitted to die naturally with only the administration of medication or the performance of any medical  
727 procedure deemed necessary to provide me with comfort care or to alleviate pain.

728 **OPTION: OTHER DIRECTIONS ABOUT LIFE-PROLONGING PROCEDURES.** (If you wish to  
729 provide your own directions, or if you wish to add to the directions you have given above, you may do  
730 so here. If you wish to give specific instructions regarding certain life-prolonging procedures, such as  
731 artificial respiration, cardiopulmonary resuscitation, artificially administered nutrition, and artificially  
732 administered hydration, this is where you should write them.) I direct that:

733 \_\_\_\_\_  
734 \_\_\_\_\_  
735 \_\_\_\_\_

OPTION: My other instructions regarding my care if I have a terminal condition are as follows:

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this advance directive shall be honored by my family and physician as the final expression of my legal right to refuse health care and acceptance of the consequences of such refusal.

**OPTION V: APPOINTMENT OF AN AGENT TO MAKE AN ANATOMICAL GIFT OR ORGAN, TISSUE OR EYE DONATION (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE AN ANATOMICAL GIFT OR ANY ORGAN, TISSUE OR EYE DONATION FOR YOU.)**

Upon my death, I direct that an anatomical gift of all of my body or certain organ, tissue or eye donations may be made pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and in accordance with my directions, if any. I hereby appoint \_\_\_\_\_ as my agent, of \_\_\_\_\_ (address and telephone number), to make any such anatomical gift or organ, tissue or eye donation following my death. I further direct that: \_\_\_\_\_ (declarant's directions concerning anatomical gift or organ, tissue or eye donation).

This advance directive shall not terminate in the event of my disability.

**AFFIRMATION AND RIGHT TO REVOKE:** By signing below, I indicate that I am emotionally and mentally capable of making this advance directive and that I understand the purpose and effect of this document. I understand I may revoke all or any part of this document at any time (i) with a signed, dated writing; (ii) by physical cancellation or destruction of this advance directive by myself or by directing someone else to destroy it in my presence; or (iii) by my oral expression of intent to revoke.

\_\_\_\_\_  
(Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

**§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions.**

A. Whenever a patient is determined to be incapable of making an informed decision and (i) has not made an advance directive in accordance with this article or (ii) has made an advance directive in accordance with this article that does not indicate his wishes with respect to the health care at issue and does not appoint an agent, the attending physician may, upon compliance with the provisions of this section, provide, continue, withhold or withdraw health care upon the authorization of any of the following persons, in the specified order of priority, if the physician is not aware of any available, willing and capable person in a higher class:

1. A guardian for the patient. This subdivision shall not be construed to require such appointment in order that a health care decision can be made under this section; or

2. The patient's spouse except where a divorce action has been filed and the divorce is not final; or

3. An adult child of the patient; or

4. A parent of the patient; or

5. An adult brother or sister of the patient; or

6. Any other relative of the patient in the descending order of blood relationship; or

7. Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.

If two or more of the persons listed in the same class in subdivisions A 3 through A 7 with equal decision-making priority inform the attending physician that they disagree as to a particular health care

797 decision, the attending physician may rely on the authorization of a majority of the reasonably available  
798 members of that class.

799 B. Regardless of the absence of an advance directive, if the patient has expressed his intent to be an  
800 organ donor in any written document, no person noted in this section shall revoke, or in any way  
801 hinder, such organ donation.

802 **§ 54.1-2986.1. Duties and authority of agent or person identified in § 54.1-2986.**

803 A. If the declarant appoints an agent in an advance directive, that agent shall have (i) the authority to  
804 make health care decisions for the declarant as specified in the advance directive if the declarant is  
805 determined to be incapable of making an informed decision and (ii) ~~decision-making priority over any~~  
806 ~~person identified in § 54.1-2986. In no case shall the agent refuse or fail to honor the declarant's wishes~~  
807 ~~in relation to anatomical gifts or organ, tissue or eye donation.~~ Decisions to restrict visitation of the  
808 patient may be made by an agent only if the declarant has expressly included provisions for visitation in  
809 his advance directive; such visitation decisions shall be subject to physician orders and policies of the  
810 institution to which the declarant is admitted. No person authorized to make decisions for a patient  
811 under § 54.1-2986 shall have authority to restrict visitation of the patient.

812 B. Any agent or person authorized to make health care decisions pursuant to this article shall (i)  
813 undertake a good faith effort to ascertain the risks and benefits of, and alternatives to any proposed  
814 health care, (ii) make a good faith effort to ascertain the religious values, basic values, and previously  
815 expressed preferences of the patient, and (iii) to the extent possible, base his decisions on the beliefs,  
816 values, and preferences of the patient, or if they are unknown, on the patient's best interests.

817 **§ 54.1-2995. Filing of documents with the registry; regulations; fees.**

818 A. A person may submit any of the following documents and the revocations of these documents to  
819 the Department of Health for filing in the Advance Health Care Directive Registry established pursuant  
820 to this article:

821 1. A health care power of attorney.

822 2. An advance directive created pursuant to Article 8 (§ 54.1-2981 et seq.) or a subsequent act of  
823 the General Assembly.

824 3. A declaration of an anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act (~~§-~~  
825 ~~32.1-291.4 et seq.) Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.~~

826 B. The document may be submitted for filing only by the person who executed the document and  
827 shall be accompanied by any fee required by the Department of Health.

828 C. All data and information contained in the registry shall remain confidential and shall be exempt  
829 from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

830 D. The Board of Health shall promulgate regulations to carry out the provisions of this article, which  
831 shall include, but not be limited to (i) a determination of who may access the registry, including  
832 physicians, other licensed health care providers, the declarant, and his legal representative or designee;  
833 (ii) a means of annually reminding registry users of which documents they have registered; and (iii) fees  
834 for filing a document with the registry. Such fees shall not exceed the direct costs associated with  
835 development and maintenance of the registry and with the education of the public about the availability  
836 of the registry, and shall be exempt from statewide indirect costs charged and collected by the  
837 Department of Accounts. No fee shall be charged for the filing of a document revoking any document  
838 previously filed with the registry.

839 2. That §§ 32.1-291.1, 32.1-291.3, 32.1-291.7 through 32.1-291.10, and 32.1-291.24 of the Code of  
840 Virginia are repealed.