

## ORGAN DONATION

There are now two ways to become a donor in NC:

1. Place a heart on your driver's license at the DMV.
2. Go to [www.donatelifenc.org](http://www.donatelifenc.org) to register.

North Carolina does not require family consent to carry out your wishes to be an organ or eye donor. All costs associated with donation are paid by the organ procurement organization. The family is only responsible for hospital charges before the death declaration and for funeral expenses.

Only individuals who have been determined to be brain dead, usually in a hospital intensive care unit, have the potential to be organ donors. Tissue donation, however, can occur when someone dies at home.

House Bill 1372 was originally titled "The Heart Prevails", signifying that the "heart" designation on a driver's license as intent to be an organ donor will function as an organ donation.

People who apply for drivers licenses or identification cards are asked if they would like to be an organ donor and are furnished with eye and tissue donor cards and information. Those choosing to do so may also request that the organ donor symbol be placed on the license or identification card. This choice is also shown on the internet organ donor registry maintained by the Division of Motor Vehicles.

Prior to October 1, 2007 any actual donation had to be effected by will or donor card or other document attested by two witnesses.

An anatomical gift based only on the heart symbol will only be a gift of an organ or an eye; it will not include a gift of tissue or of the donor's entire body.

Whether one can get a new license if a person wants to delete the symbol is unclear.

The person with the heart symbol could revoke the gift by entering the revocation or refusal on the internet web site maintained by the Division of Motor Vehicles. But, the driver's license may be the only document that shows up in the emergency room.

The heart symbol on the driver's license operates as a gift of all organs or eyes, but it has no specificity. The client may still want to specify the institution to initially receive the

gift. A donation in a “will” is effective before the probate of the will, however the document is often not located before it is too late to procure the organs.

House Bill 1372 provides that use of a registry is a method of *making* an anatomical gift. The record itself will function as an anatomical gift even if the record itself is unavailable. A health care agent may make an anatomical gift before or after the principal’s death *to the extent provided* in the health care power of attorney.

A person may make a gift during a terminal illness “by any form of communication” addressed to at least two adults, one of whom must be a “disinterested witness”.

If your client does not want to be an organ donor, the client may effect a revocation of any previous intentional or inadvertent donations and execute a refusal to make an anatomical gift. A revocation only revokes a gift made by the donor. To preclude others from making a gift after his or her death, the potential donor needs to execute a “refusal” to make an anatomical gift, defined as any record” that expressly states an intent to bar other persons from making an anatomical gift.” As with a revocation, there are no witness requirements, unless the revocation is executed by another person at the direction of the donor.”

House Bill 1372 allows a minor to make an anatomical gift if (a) they are eligible to apply for a driver’s license because he or she is 16 years old or, (b) emancipated.

House Bill 1372 on health care powers of attorney and living wills harmonize the statutes on post mortem decisions to clarify the health care agent’s decisions about the disposition of remains.

House Bill 634 clarifies that the health care agent has precedence over the person named executor in a will “to make body, funeral, and burial arrangements” subject to financial limitations incurring reasonable costs related to exercising these powers about the disposition of remains.

**§ 20-43.2 Internet access to organ donation records by organ procurement organizations.**

(a) The Department of Transportation, Division of Motor Vehicles, shall establish and maintain a statewide, online **Organ** Donor Registry Internet site (hereafter "Donor Registry"). The purpose of the Donor Registry is to enable federally designated **organ**

procurement organizations and eye banks to have access 24 hours per day, seven days per week 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 through a symbol on the donor's or prospective donor's drivers license, special identification card, or other manner. The data available on the Donor Registry shall be limited to the individual's first, middle, and last name, date of birth, address, sex, county of residence, and drivers license number. The Division of Motor Vehicles shall ensure that only federally designated **organ** procurement organizations and eye banks operating in this State have access to the Donor Registry in read-only format. The Division of Motor Vehicles shall enable federally designated **organ** procurement organizations and eye banks operating in this State to have online access in read-only format to the Donor Registry through a unique identifier and password issued to the **organ** procurement organization or eye bank by the Division of Motor Vehicles. Employees of the Division who provide access to or disclosure of information in good-faith compliance with this section are not liable in damages for access to or disclosure of the information.

(b) When accessing and using information obtained from the Donor Registry, federally designated **organ** procurement organizations and eye banks shall comply with the requirements of Part 3A of Article 16 of Chapter 130A of the General Statutes.

(c) Personally identifiable information on a donor registry about a donor or prospective donor may 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.

(d) 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 (b) and (c) of this section. (2004-189, s. 1; 2007-538, s. 2.)

## **6. Organ Donation.**

To the extent I have not already made valid and enforceable arrangements during my lifetime that have not been revoked, my health care agent may exercise any right I may have to:

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*(Initial)*

donate any needed organs or parts; or

donate only the following organs or parts:

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**NOTE: DO NOT INITIAL BOTH BLOCKS ABOVE.**

donate my body for anatomical study if needed.

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*(Initial)*

In exercising the authority to make donations, my health care agent is subject to the following special provisions and limitations: (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority and the scope of authority, or instructions regarding gifts of the body or body parts.)

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\_\_\_\_\_

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**NOTE: DO NOT initial unless you insert a limitation.**

**NOTE: NO AUTHORITY FOR **ORGAN DONATION** IS GRANTED IN THIS INSTRUMENT WITHOUT YOUR INITIALS.**

**§ 130A-412.7 Manner of making anatomical gift before donor's death.**

(a) A donor may make an anatomical gift by any of the following methods:

(1) By authorizing that a statement or symbol be imprinted on the donor's drivers license or identification card indicating that the donor has made an anatomical gift. Anatomical gifts made by this method shall not include a donation of tissue or the donor's body.

(2) In a will.

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness.

(4) As provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may make a gift by a signed 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:

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

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

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

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift. (2007-538, s. 1.)

**§ 130A-412.6 Who may make an anatomical gift before donor's death.**

Subject to G.S. 130A-412.10, an anatomical gift of a donor's body or body part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in G.S. 130A-412.7 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 drivers license because the donor is at least 16 years of age;

(2) An agent of the donor to the extent authorized under a power of attorney for health care or other record;

(3) A parent of the donor, if the donor is an unemancipated minor; or

(4) The donor's guardian. (2007-538, s. 1.)

**§ 130A-412.8 Amending or revoking anatomical gift before donor's death.**

(a) Subject to G.S. 130A-412.10, a donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 may amend or revoke an anatomical gift by:

(1) A record signed by:

a. The donor;

b. The other person; or

c. Subject to subsection (b) 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

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

(b) A record signed pursuant to sub-subdivision c. of subdivision (1) of subsection (a) of this section must:

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

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to G.S. 130A-412.10, a donor or other person authorized to make an anatomical gift under G.S. 130A-412.6 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.

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

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section. (2007-538, s. 1.)

### **§ 130A-412.9 Refusal to make anatomical gift; effect of refusal.**

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

(1) A record signed by:

a. The individual; or

b. Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

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

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to sub-subdivision b. of subdivision (1) of subsection (a) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

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

(1) In the manner provided in subsection (a) of this section for making a refusal;

(2) By subsequently making an anatomical gift pursuant to G.S. 130A-412.7 that is inconsistent with the refusal; or

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

(d) Except as otherwise provided in G.S. 130A-412.10(h), 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 body part bars all other persons from making an anatomical gift of the individual's body or body part. (2007-538, s. 1.)

### **§ 130A-412.10 Preclusive effect of an anatomical gift, amendment, or revocation.**

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) 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 body part if either of the following apply:

(1) The donor made an anatomical gift of the donor's body or body part under G.S. 130A-412.7.

(2) The donor made an amendment to an anatomical gift of the donor's body or body part under G.S. 130A-412.8.

(b) A donor's revocation of an anatomical gift of the donor's body or body part under G.S. 130A-412.8 is not a refusal and does not bar another person specified in G.S. 130A-412.6 or G.S. 130A-412.11 from making an anatomical gift of the donor's body or body part under G.S. 130A-412.7 or G.S. 130A-412.12.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or body part under G.S. 130A-412.7 or an amendment to an anatomical gift of the donor's body or body part under G.S. 130A-412.8, another person may not make, amend, or revoke the gift of the donor's body or body part under G.S. 130A-412.12.

(d) A revocation of an anatomical gift of a donor's body or body part under G.S. 130A-412.8 by a person other than the donor does not bar another person from making an anatomical gift of the body or body part under G.S. 130A-412.7 or G.S. 130A-412.12.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a body part is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another body part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under G.S. 130A-412.6, an anatomical gift of a body part for one or more of the purposes set forth in G.S. 130A-412.6 is not a limitation on the making of an anatomical gift of the body part for any of the other purposes by the donor or any other person under G.S. 130A-412.7 or G.S. 130A-412.12.

(g) 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 body part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal. (2007-538, s. 1.)