

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3999/1dn

DAK:cmh:mrc

December 9, 1999

To Senator Rosenzweig:

1. Under current law, "document of gift" is defined to include a card, a driver's license, an identification card issued by DOT, a will or another writing (such as a power of attorney for health care). The bill amends this definition to include an enrollment form for the organ and tissue donor registry, thus adding another means by which a person might signify his or her wishes to donate. There is no statutory requirement that a document of gift be dated, although a driver's license or an identification card issued by DOT each contain a space for a date, and a will and a health care power of attorney each must be dated. All of these documents may be revoked, to indicate a person's change of mind. A revocation of a document of gift is accomplished by signing a statement of revocation; signing a new document of gift (signing a new document of gift revokes any previously signed document of gift); verbally revoking in the presence of 2 individuals; communicating with a physician while one is terminally ill or injured; delivering a signed statement of revocation to a specified donee; crossing out the gift authorization on one's driver's license or identification card; or revoking a power of attorney for health care instrument or a provision of the instrument. There is no statutory requirement that a revocation be dated. I am concerned about the situation in which a person has enrolled in the organ and tissue donor registry, which constitutes making a document of gift, but has scratched out a donation on his or her driver's license. Unless the person has dated the scratching out, which I think unlikely, it would be impossible (without some other sort of evidence) to tell whether the revocation on the driver's license or the gift under the enrollment form is the last expression of the person's intent and, therefore, rules. Obviously, this problem already exists under current law, but I am concerned that further confusion may arise with the advent of the registry; for example, a person may want to donate but may believe, for instance, that crossing out the document of gift on the driver's license would be acceptable (and less repetitious) as long as he or she has signed a registry enrollment form. Or, a person who wants to revoke may cross out the document of gift on the driver's license but fail to revoke the registry enrollment form.

There are several ways to approach this problem, should you wish to do so: one would be to prohibit changing one's designation on a driver's license or identification card except by applying for a duplicate license; this alternative might be somewhat costly, either to the person or to DOT. A second way would be to require that revoking a document of gift on a driver's license or identification card be initialled and dated. Yet

another way would be to require that all documents of gift or refusal to make a gift and all revocations be dated.

2. Please review the language I have drafted as a change to the power of attorney for health care form, concerning the donation of one's body to an institution; I have changed the proposed language somewhat, to align it with the parenthetical provision that immediately follows and to place it in active, rather than passive voice.

Please let me know if I may be of further assistance.

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