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## Robbing the Grave: Amending the Uniform Anatomical Gift Act to Curtail Abuses Within the Whole-Body Donation Industry

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ROBBING THE GRAVE: AMENDING  
THE UNIFORM ANATOMICAL GIFT  
ACT TO CURTAIL ABUSES WITHIN  
THE WHOLE-BODY DONATION  
INDUSTRY

*Andrew Y. Schiefer*<sup>†</sup>

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<sup>†</sup> J.D. Candidate, 2019, Case Western Reserve University School of Law; B.S. Arizona State University; This Note is dedicated to my wife, Maureen, whose love and support form the foundation of all my accomplishments. And to my boys, Broc & Barrett: your unrelenting curiosity is an inspiration to me. I would like to thank Professor Sharona Hoffman for her guidance and patience as I wrestled through the process of writing this Note. I would also like to thank my peers, past and present, at Health Matrix; it's been an honor to rub shoulders with such outstanding and talented people. Finally, I would like to thank my Mother, who's always been in my corner rooting for my success.

## INTRODUCTION

“When a body is donated, few states provide rules governing dismemberment or use, or offer any rights to a donor’s next of kin. Bodies and parts can be bought, sold and leased, again and again. As a result, it can be difficult to track what becomes of the bodies of donors, let alone ensure that they are handled with dignity.”<sup>1</sup>

- Brian Grow & John Shiffman

In 2013, Doris Stauffer, age seventy-four, passed away after years of battling dementia brought on by Alzheimer’s disease.<sup>2</sup> Her grieving son, Jim Stauffer, decided to donate his mother’s body to contribute to medical research efforts to find a cure for Alzheimer’s.<sup>3</sup> A nurse recommended that the Stauffer family contact Biological Resource Center, Inc. (BRC), a local Arizona company that made arrangements and sold donated bodies to research organizations.<sup>4</sup> Stauffer authorized the donation of his mother’s body and also checked boxes on the donation form specifying that he did not want BRC to use his mother’s body for any non-medical research.<sup>5</sup> A few weeks after Doris passed away, the Stauffer family received a package from BRC containing cremated ashes of the portions of Doris’s body that were not sold to researchers, but BRC never informed the Stauffers about what happened to the rest of her body.<sup>6</sup> A Reuters investigative team discovered that the cremated remains sent to the Stauffer family consisted solely of one of Doris’s hands, which had been dismembered prior to selling the rest of her body.<sup>7</sup> Then, BRC auctioned off Doris’s body to the highest bidding purchaser, a common practice among whole-body donation businesses. Doris’s remains were bought by a “taxpayer-funded research project for the U.S. Army” that “measured

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1. John Shiffman & Brian Grow, *Special Report: In the Market for Human Bodies, Almost Anyone Can Sell the Dead*, REUTERS (Oct. 24, 2017, 7:09 AM), <https://www.reuters.com/article/us-usa-bodies-brokers-specialreport/special-report-in-the-market-for-human-bodies-almost-anyone-can-sell-the-dead-idUSKBN1CT1F5> [hereinafter *Special Report*].
  2. John Shiffman, *How the Body of an Arizona Great-Grandmother Ended Up as Part of a U.S. Army Blast Test*, REUTERS (Dec. 23, 2016, 2:00 PM), <http://www.reuters.com/investigates/special-report/usa-bodybrokers-industry/> [hereinafter *How the Body*].
  3. *Id.*
  4. *Id.*
  5. *Id.*
  6. *Id.*
  7. *Id.*

damage caused by roadside bombs.”<sup>8</sup> The Stauffer family was devastated to learn how their beloved Doris’s body had been exploited against their express wishes.<sup>9</sup> Doris Stauffer is just one example of the myriad abuses that occur in the lightly-regulated<sup>10</sup> whole-body donation industry. Without Reuters’ investigative efforts, the Stauffer family, like so many other families,<sup>11</sup> would have no idea that their charitable gift had been used for a purpose they expressly prohibited and auctioned off to enrich the organization they had entrusted with their loved one.

The whole-body donation industry is illustrative of the idiom “one man’s trash is another man’s treasure.”<sup>12</sup> While comparing human remains to trash may seem insensitive and inappropriate, government restrictions and current law provide individuals with more options regarding what they can do with their trash, such as collecting, selling,<sup>13</sup> recycling, transforming,<sup>14</sup> or even doing nothing, than with the remains of their loved ones. The American legal system does not recognize traditional property rights over human remains.<sup>15</sup> Instead, the next of kin is given the limited right of possession over the body for purposes of laying it to rest.<sup>16</sup> In most states, local governments, under their delegated policing powers, are allowed to enforce strict regulations regarding the disposal of human remains.<sup>17</sup> These local regulations further restrict the location and method options available to families in laying their loved ones to rest. Family members are faced with essentially two options regarding their loved ones’ remains: disposal

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8. *Id.*

9. *Id.*

10. Corine Purtill, *The Awful Truth of Donating a Dead Body to “Science”*, QUARTZ (Oct. 25, 2017), <https://qz.com/1111853/the-unregulated-reality-of-donating-a-body-to-science/>.

11. See Kate Wilson, *Abusing the ‘Gift’ of Tissue Donation*, ICIJ (July 18, 2012), <https://www.icij.org/investigations/tissue/abusing-gift-tissue-donation/>.

12. USINGENGLISH.COM, <https://www.usingenglish.com/reference/idioms/one+man%27s+trash+is+another+man%27s+treasure.html> (last visited Jan. 20, 2017).

13. See generally, *9 Things in Your Trash You Can Sell for Cash*, MONEY PANTRY (Jan. 31, 2017), <http://moneypantry.com/cash-for-trash/>.

14. See Melissa Bryer, *50 Ways to Reuse Your Garbage*, MOTHER NATURE NETWORK (Apr. 4, 2014, 8:46 AM), <https://www.mnn.com/money/personal-finance/stories/50-ways-to-reuse-your-garbage>.

15. Walter F. Kuzenski, *Property in Dead Bodies*, 9 MARQ. L. REV. 17, 17 (1924).

16. *Id.* at 17.

17. *Id.* at 20.

(through burial or cremation and subject to strict regulation) or donation.

Whole-body donation businesses rely on the limited rights associated with human remains to keep their inventory stocked. Much of their advertising<sup>18</sup> targets two groups of potential donors: altruistic donors seeking a science-friendly and utilitarian option<sup>19</sup> and low-income donors seeking relief from the expenses associated with traditional services.<sup>20</sup> In the U.S., a traditional funeral can cost between \$8000 - \$11,000.<sup>21</sup> Unfortunately, most organizations do not disclose exact details regarding what they do with the donations. Once a donation is gifted, there is virtually no way for the donor's family to learn what happened to the body. Additionally, many donors do not fully understand what legal rights and remedies are available to them after they sign a donation form.<sup>22</sup>

This Note will examine the abuses that abound behind the scenes in the whole-body donation industry. It will propose potential reforms to better protect the rights of donors, their families, and researchers without unreasonably hindering the already limited supply of donations. Part II of this note provides background on the process of whole-body donation, the current regulatory mechanisms in place, and the rapidly growing industry of body brokering. Part III analyzes the problems and abuses present in the whole-body donation industry. Part IV argues that current laws and regulations are inadequate to prevent or detect such abuses. Part V offers recommendations to provide better industry transparency, accountability, and uniformity.

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18. *Medical Advancements Through Whole Body Donation*, MEDCURE, [http://www.medcure.org/?gclid=EAIaIQobChMI\\_em0ifPp2AIVBZJpCh2AvGLWEAAYASAAEgKsg\\_D\\_BwE](http://www.medcure.org/?gclid=EAIaIQobChMI_em0ifPp2AIVBZJpCh2AvGLWEAAYASAAEgKsg_D_BwE) (last visited Feb. 21, 2019).

19. *Id.*

20. *See The Cost of Cremation vs Burial*, NAT'L CREMATION (Aug. 8, 2016), <https://www.nationalcremation.com/cremation-information/the-cost-of-cremation-vs-burial>; Brian Grow & John Shiffman, *Special Report: U.S. Company Makes a Fortune Selling Bodies Donated to Science*, REUTERS (Oct. 26, 2017, 7:03 AM), <https://www.reuters.com/article/us-usa-bodies-science-specialreport/special-report-u-s-company-makes-a-fortune-selling-bodies-donated-to-science-idUSKBN1CV1J7>.

21. *See How Much Does the Average Funeral Cost*, PARTING (Jan. 23, 2018), <https://www.parting.com/blog/how-much-does-the-average-funeral-cost/>; *What Does Cremation Cost?*, NEPTUNE SOC'Y, <https://www.neptunesociety.com/resources/what-does-cremation-cost> (last visited Mar. 17, 2018).

22. *See How the Body*, *supra* note 2.

## I. BACKGROUND

### A. Whole-Body Donation

“Donating your body to science . . . is, at once, both practical and yet an unequivocal way of making a human[e], ethical and lasting legacy from your life.”<sup>23</sup> This statement is representative of much of the rhetoric found online<sup>24</sup> and in advertisements regarding whole-body donation. Much like living organ and blood donations, whole-body donations are often characterized as altruistic and lifesaving gifts that are “valued and honored” beyond measure.<sup>25</sup> There are many uses for donated bodies, including as crash-test dummies for automotive and other safety researchers, for medical training at a medical school or other institution, as displays at an anatomy museum or exhibit, or for non-medical forensic and military research.<sup>26</sup> Whole-body donation has undoubtedly helped advance medical science in a wide gamut of areas of study including bone fractures, brain injury or disease, cancer, and surgical techniques.<sup>27</sup> While many organizations and associations advertise the need for body donations and offer praise to donors, far fewer offer insight into the details of how donated bodies are procured, stored, bought, transported, leased, or discarded.

Whole-body donation is a donation of a human body made under the Uniform Anatomical Gift Act (UAGA).<sup>28</sup> The UAGA works in tandem with the National Organ Transplant Act (NOTA) when organs or tissues are procured specifically for transplant from recently deceased donors.<sup>29</sup> Increasing the supply of available organs for transplant,

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23. *Whole Body Donation in the United States*, US FUNERALS (Oct. 23, 2014), <http://www.us-funerals.com/funeral-articles/donating-a-body-to-science.html#.Wfyi1BMrK8o>.
  24. *See Giving Back by Helping Advance Medical Knowledge*, MEDCURE, <http://medcure.org/donor> (last visited Mar. 17, 2018); *see* SCIENCECARE, <http://www.sciencecare.com/> (last visited Mar. 17, 2018); *see The Process for Donating Your Body to Science*, BIOGIFT, <http://biogift.org/body-donation-process.php> (last visited Mar. 17, 2018).
  25. *See e.g., Willed Body Program FAQ*, U. CAL. S.F., <http://www.willedbodyprogram.ucsf.edu> (last visited Jan. 30, 2018).
  26. Kathleen Wong, *What Happens to Your Body When It's Donated to Science*, MASHABLE (Mar. 15, 2015), <http://mashable.com/2015/03/15/body-donation-science/#WA0qHEe8wSqQ>; *How the Body*, *supra* note 2.
  27. *Giving Back with Impact*, SCIENCECARE, <http://www.sciencecare.com/medical-research-projects/> (last visited Mar. 17, 2018).
  28. REVISED UNIF. ANATOMICAL GIFT ACT (UNIF. LAW. COMM'N 2006).
  29. *See* Robyn S. Shapiro, *Legal Issues in Payment of Living Donors for Solid Organs*, 30 HUM. RTS. 19, 19 (2003).

kidneys in particular, was one of the main objectives of the UAGA.<sup>30</sup> However, whole-body donation quickly became a booming industry for donated bodies not eligible for transplantation. Under the UAGA, the remains of a decedent may be donated and subsequently purchased by almost anyone.<sup>31</sup>

While organizations may have subtle variations in their forms<sup>32</sup> and procedures,<sup>33</sup> the donation process is relatively simple and straightforward.<sup>34</sup> First, a potential donor fills out the necessary forms to provide an organization (a hospital, medical school, tissue bank, or other whole-body donation organization) with the legal authorization to take possession of the body at the time of death.<sup>35</sup> These authorization forms can be filled out either ahead of time in person or online by donors themselves,<sup>36</sup> or posthumously by someone who has legal authorization as specified in the UAGA.<sup>37</sup> Some medical schools and other donation organizations require a simple medical screening to ensure that the donated body matches certain criteria to establish the person is a suitable donor for their purposes.<sup>38</sup> Prospective donors with certain infectious diseases or other conditions may be denied the opportunity to donate.<sup>39</sup> HIV, AIDS, and Hepatitis C are three of the

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30. REVISED UNIF. ANATOMICAL GIFT ACT, PREFATORY NOTE (UNIF. LAW. COMM'N 2006).
31. Brian Grow & John Shiffman, *In the U.S. Market for Human Bodies, Almost Anyone Can Dissect and Sell the Dead*, REUTERS INVESTIGATES (Oct. 24, 2017, 11:00 AM), <https://www.reuters.com/investigates/special-report/usa-bodies-brokers/> [hereinafter *Almost Anyone*]; Brian Grow & John Shiffman, *Body Donation: Frequently Asked Questions*, REUTERS INVESTIGATES (Oct. 24, 2017, 11:00 AM), <https://www.reuters.com/investigates/special-report/usa-bodies-qanda/>.
32. *Register*, MEDCURE, <http://medcure.org/donor#pledge> (last visited Mar. 17, 2018) (whole body donation form).
33. *See id.* (listing four-step “how it works” process); *see also How Does the Body Donation Process Work?*, SCIENCECARE, <http://www.sciencecare.com/how-does-the-body-donation-process-work/> (last visited Mar. 17, 2018) [hereinafter *Body Donation Process*].
34. *See* Melanie Radzicki Mcmanus, *How Donating Your Body to Science Works*, HOW STUFF WORKS, <https://science.howstuffworks.com/life/biology-fields/donating-body-to-science.htm> (last visited Jan. 20, 2017).
35. REVISED UNIF. ANATOMICAL GIFT ACT § 11 (UNIF. LAW. COMM'N 2006).
36. *Id.* at § 5.
37. *Id.* at § 9.
38. *Body Donation Process*, *supra* note 33.
39. FOOD & DRUG ADMIN., GUIDANCE FOR INDUSTRY - ELIGIBILITY DETERMINATION FOR DONORS OF HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS (HCT/PS) (2007), at 2.

main reasons why individuals are barred from donating their remains.<sup>40</sup> These prohibitions are not only important to prevent transplantation of diseased tissue, but also to prevent medical students, lab technicians, and others who come into contact with cadaveric tissue from exposure to highly infectious diseases.<sup>41</sup> After a donor dies, the donation organization takes possession of the body and transports it to its own facility<sup>42</sup> where it will later be either used by the same organization or distributed<sup>43</sup> to another research organization. Any portion of the remains of the donor that are not used for research are often cremated and sent back to the family of the donor.<sup>44</sup> Some larger donation organizations even offer to hold quasi-funeral ceremonies to honor the donors and their generosity.<sup>45</sup> Regardless of the reason for donation or the eventual use of the body, all post-mortem donations fall under the regulations of a respective state's version of the UAGA, if adopted.<sup>46</sup>

### B. *Uniform Anatomical Gift Act*

The Uniform Anatomical Gift Act (UAGA) was first approved by Congress in 1968,<sup>47</sup> following the first successful heart transplant in 1967 performed by Dr. Christiaan Barnard.<sup>48</sup> In order to facilitate uniformity among the states, the UAGA was proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL),<sup>49</sup> and individual

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40. *Id.* at 3.
41. See e.g. Brian Grow & John Shiffman, *Special Report: In Warehouse of Horrors, Body Broker Stacked Human Heads*, REUTERS (Oct. 24, 2017, 7:04 AM), <http://www.reuters.com/article/us-usa-bodies-rathburn-specialreport/special-report-in-warehouse-of-horrors-body-broker-stacked-human-heads-idUSKBN1D01B5>.
42. *Body Donation Process*, *supra* note 33; *The Process for Donating Your Body to Science*, *supra* note 24.
43. See *Frequently Asked Questions About Full Body Donation*, BIOGIFT, <http://biogift.org/body-donation-faq.php> (last visited Mar. 17, 2018) (“Where do the . . . tissues . . . go when I’m donating my body to science?”).
44. *Id.* (“Is the body cremated and returned to the family?”).
45. See *Science Care Donor Memorial Tributes*, SCIENCECARE, <http://www.sciencecare.com/science-care-donor-memorial-tributes/> (last visited Mar. 17, 2018).
46. Alexandra K. Glazier, *Organ Donation and the Principles of Gift Law*, 13 CLINICAL J. AM. SOC’Y NEPHROLOGY 1283 (2018).
47. REVISED UNIF. ANATOMICAL GIFT ACT §§ 5, 6, 7, 8 (UNIF. LAW. COMM’N 2006).
48. Raymond Hoffenberg, *Christiaan Barnard: His First Transplants and Their Impact on Concepts of Death*, 323 BMJ 1478 (2001).
49. REVISED UNIF. ANATOMICAL GIFT ACT, HISTORY OF 1968 AND 1987 ACTS (UNIF. LAW. COMM’N 2006).



states had the option to adopt it (with or without modification) or decline to do so.<sup>50</sup> The purpose of the act was to stimulate the supply of viable organs available for transplantation in the wake of breakthroughs in transplant technology and techniques.<sup>51</sup> Congress can only promulgate legislation pursuant to one of its enumerated powers under Article I of the Constitution.<sup>52</sup> Due to the constitutional constraints on federal power, the UAGA could only be endorsed but not enacted on the federal level.<sup>53</sup> By 1971, every state had adopted the UAGA with only minor modifications in some states.<sup>54</sup> Since that time, the UAGA has been revised by the NCCUSL twice: once in 1987<sup>55</sup> and again in 2006.<sup>56</sup> Less than half of the states subsequently adopted the 1987 version of the UAGA, which created even greater barriers to making donated organs available across state lines.<sup>57</sup> The 2006 revision was an attempt to update the act and increase uniformity among the states' versions of the law.<sup>58</sup> As of October 2017, 46 states have enacted the 2006 revision of the UAGA.<sup>59</sup> The scope of the UAGA is limited to

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50. See Britta Martinez, *Uniform Anatomical Gift Act (1968)*, EMBRYO PROJECT ENCYCLOPEDIA (Aug. 5, 2013), <https://embryo.asu.edu/pages/uniform-anatomical-gift-act-1968>.
51. REVISED UNIF. ANATOMICAL GIFT ACT, PREFATORY NOTE (UNIF. LAW. COMM'N 2006).
52. See U.S. CONST. art. I; CONG. RESEARCH SERV., R44729, CONSTITUTIONAL AUTHORITY STATEMENTS AND THE POWERS OF CONGRESS: AN OVERVIEW (2017); Kate Stith, *Congress' Power of the Purse*, 97 YALE L.J. 1343, 1347 (1988).
53. REVISED UNIF. ANATOMICAL GIFT ACT, SCOPE OF THE 2006 REVISED ACT (UNIF. LAW. COMM'N 2006).
54. Martinez, *supra* note 50.
55. REVISED UNIF. ANATOMICAL GIFT ACT, HISTORY OF 1968 AND 1987 ACTS (UNIF. LAW. COMM'N 2006).
56. *Id.*
57. *Id.*; see Maryellen Liddy, *The "New Body Snatchers": Analyzing the Effect of Presumed Consent Organ Donation Laws on Privacy, Autonomy, and Liberty*, 28 FORDHAM URBAN L.J. 815, 823 (2000).
58. REVISED UNIF. ANATOMICAL GIFT ACT, SUMMARY (UNIF. LAW. COMM'N 2006); Dolph Chianchiano, *The Uniform Anatomical Gift Act and Organ Donation in the United States*, 13 ADVANCES IN CHRONIC KIDNEY DISEASE 189, 191 (2006).
59. *Legislative Fact Sheet - Uniform Anatomical Gift Act*, UNF. L. COMM'N (2006), [http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Anatomical%20Gift%20Act%20\(2006\)](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Anatomical%20Gift%20Act%20(2006)).

donations from deceased donors.<sup>60</sup> Organ and tissue donations made by living donors are governed by the National Organ Transplant Act.<sup>61</sup>

Overall, the UAGA provides workable guidelines for donations to be used for transplantation or therapy.<sup>62</sup> Where the UAGA is lacking, however, is when bodies are donated to non-transplant organizations and body brokers. Section 11 of the UAGA is entitled “Persons That May Receive Anatomical Gift; Purpose of Anatomical Gift.” It details which types of entities may receive an anatomical gift.<sup>63</sup> Under subsection 11(a), an anatomical gift can be made to “a hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person for research or education.”<sup>64</sup> Unfortunately, the UAGA never defines who may qualify as an “appropriate person for research or education” under sections 2, 11, or anywhere else in the Act. Section 2 defines “person” as “an individual, corporation, business trust, estate, trust, partnership, limited liability company, association . . . or any other legal or commercial entity.”<sup>65</sup> It does not, however, define “research” or “education.”<sup>66</sup> The official comments to section 11 recognize that most donations in this category “typically occur as the result of a whole-body donation to a particular institution.”<sup>67</sup> Research and education covers an extremely wide breadth of activities and leaves the door open for possible misuse and abuse of donated bodies. The threat of misuse and abuse is further compounded by the lack of an agency or system to provide oversight over the industry.<sup>68</sup> The official comments require that gifts made for transplant or therapy are also governed by the Organ Procurement Transplantation Network (OPTN) and other non-profit agencies,<sup>69</sup> but no such agencies currently exist to facilitate gifts made for research or education. Consequentially, any individual or legal or commercial entity may obtain a donated body so long as they use it in some form of activity that can be considered educational or research-oriented.

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60. *Id.*

61. National Organ Transplantation Act, S.B. 2228, 106th Cong. (1984).

62. REVISED UNIF. ANATOMICAL GIFT ACT, SCOPE OF THE 2006 REVISED ACT (UNIF. LAW. COMM’N 2006).

63. *Id.* at § 11.

64. *Id.* at § 11(a)(1).

65. *Id.* at § 2.

66. *Id.*

67. *Id.* at § 11 cmnt.

68. *See* Purtill, *supra* note 10.

69. REVISED UNIF. ANATOMICAL GIFT ACT § 11 cmnt (UNIF. LAW. COMM’N 2006).

Another UAGA gap exists in Section 16: “Sale or Purchase of Parts Prohibited.” Under subsection 16(a), “a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy” can be punished by a fine of no more than \$50,000, or imprisonment up to five years, or both.<sup>70</sup> According to the text, section 16(a) does not prohibit the sale of donated body parts for other legitimate purposes enumerated under the Act, namely research and education.<sup>71</sup> Furthermore, in the official comment to section 16, the drafters note that the prohibition “only applies to sales of parts intended to be recovered from a decedent after death *for transplantation or therapy*.”<sup>72</sup> Neither the NCCUSL nor Congress explained the rationale for limiting the scope of prohibited sales of organs; however, the specific reference to parts used for transplantation or therapy necessarily limit the scope of the prohibition to donations used for those aforementioned purposes. The sale of human organs for transplantation, in fact, has already been outlawed by NOTA.<sup>73</sup> Medical experts and economists have long argued that commodifying human organs would lead to the creation of an illegal organ market.<sup>74</sup> Another argument against selling organs is that high compensation may become a coercive pressure to low-income individuals.<sup>75</sup> A donated kidney is estimated to be worth \$45,000,<sup>76</sup> an amount that some may feel financially unable to turn down. Whether by conscious design or drafting oversight, the UAGA does not prohibit the sale of body parts for research and education. Due to the gap created by sections 11(a)(1) and 16(a), a grisly business of brokering donated bodies and body parts thrives.

### C. Body Brokers

The UAGA’s limited scope allowed the growth of an entire industry selling human body parts to go unchecked. Businesses that engage in the virtually regulation-free sale of donated human remains are often referred to as cadaver providers, non-transplant tissue banks, or “body

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70. *Id.* at § 16(a).

71. *Id.* at § 11(a)(1).

72. *Id.* (emphasis added).

73. National Organ Transplantation Act, S.B. 2228, 106th Cong. (1984).

74. See Julia D. Mahoney, *Altruism, Markets, and Organ Procurement*, 72 L. & CONTEMP. PROB. 17, 21 (2009); see *contra* Stephanie Zwerner, *A Small Price to Pay: Incentivizing Cadaveric Organ Donations with Posthumous Payments*, 18 MINN. J. L. SCI. & TECH. 283, 285 (2017).

75. *Id.* at 22.

76. See P.J. Held et al., *A Cost-Benefit Analysis of Government Compensation of Kidney Donors*, 16 AM. J. OF TRANSPLANTATION 877, 881-82 (2016) (proposing donors be compensated \$45,000 for a kidney).

brokers.”<sup>77</sup> Under section 11, “appropriate person[s]” can receive donated bodies for education and research.<sup>78</sup> The act does not specify that the body must be directly used by the organization to which it was gifted. Organizations conducting non-medical projects, such as for forensics or military research, often don’t have enough resources to solicit their own donations.<sup>79</sup> The high demand for parts<sup>80</sup> has allowed opportunistic middle men to provide the services of soliciting, securing, collecting, transporting, storing, and selling deceased bodies.

Body broker businesses run the gamut from large national corporations<sup>81</sup> to small, local “mom and pop” shops.<sup>82</sup> Businesses like Medcure,<sup>83</sup> Science Care,<sup>84</sup> and Biogift<sup>85</sup> are examples of some of the larger body brokers in the industry. Large organizations often have an expansive online advertising presence and provide services all over the country.<sup>86</sup> Their websites are colorful, inviting, and fairly easy to navigate and are often adorned with pictures of tender family moments.<sup>87</sup> Encouraging language about donations, like “leav[ing] a legacy” and “consider anatomical gifts as your last charitable act”<sup>88</sup> help target altruistic potential donors. They also prominently advertise the economic benefits of donating,<sup>89</sup> such as free cremation services, to

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77. *Almost Anyone*, *supra* note 31; *Human Tissue & Cadaver Provider*, UNITED TISSUE NETWORK, [https://unitedtissue.org/Medical\\_Device\\_Companies/](https://unitedtissue.org/Medical_Device_Companies/) (last visited Mar. 22, 2019).

78. REVISED UNIF. ANATOMICAL GIFT ACT § 11 (UNIF. LAW. COMM’N 2006).

79. See Marylynn Pitz, *Donating Your Body to Science*, PITTSBURGH POST-GAZETTE (Apr. 28, 2010, 8:00 AM), <http://www.post-gazette.com/news/health/2010/04/28/Donating-your-body-to-science/stories/201004280188>.

80. R.McS, *Why There is a Shortage of Cadavers*, ECONOMIST (Jan. 19, 2014), <https://www.economist.com/blogs/economist-explains/2014/01/economist-explains-10>.

81. *Almost Anyone*, *supra* note 31.

82. *Id.*

83. *Register*, *supra* note 32.

84. SCIENCECARE, *supra* note 24.

85. *The Process for Donating Your Body to Science*, *supra* note 24.

86. *Body Donation Process*, *supra* note 33; *Frequently Asked Questions*, SCIENCECARE, <https://www.sciencecare.com/whole-body-donation-faq/> (last visited Oct. 3, 2018).

87. *The Process for Donating Your Body to Science*, *supra* note 24 (picture on website home page).

88. *Id.* (quotes on home page).

89. *Id.* (home page claiming, “we cover all expenses, including cremation . . .”).

target low-income donors.<sup>90</sup> Despite lack of regulation or statutory mandates regarding the type of disclosures or information required on websites, the competitive market drives these larger businesses to be as helpful and transparent as possible. Conversely, smaller local body brokers often operate by word of mouth or work closely with local hospitals and morticians.<sup>91</sup> Potential donors who have not made prior arrangements are often referred to local body brokers by health-care workers. Whether large or small, body brokers are all businesses dealing in a valuable, high-demand commodity.

Selling body parts that were acquired for free via donation is the hallmark of body brokering. There are industries<sup>92</sup> and organizations that either don't have the resources or prefer to use a third party to obtain body parts on an "as-needed" basis. Whole-body donation plays an essential role in furthering both medical and non-medical research.<sup>93</sup> Body brokers can help ensure that important research projects have the necessary supplies for effective testing.<sup>94</sup> Like any for-profit business, body brokers engage in transactions with hopes of improving their bottom line. Body brokers do not have to pay for their supply in a conventional sense, their inventory is procured via donation. However, there are related costs<sup>95</sup> associated with receiving, transporting, and storing cadaveric tissue without compromising its research value.<sup>96</sup> Brokers are faced with other regulations, such as the FDA's standards for testing and storing biological materials,<sup>97</sup> in the normal course of their business. However, without adequate agency oversight, violations of these regulations may go unpunished.<sup>98</sup> Regardless of lax regulations,

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90. See *The Process for Donating Your Body to Science*, *supra* note 24.
91. *Almost Anyone*, *supra* note 31; John Shiffman & Brian Grow, *How an American Company Made a Fortune Selling Bodies Donated to Science*, REUTERS INVESTIGATES (Oct. 26, 2017, 11:00 AM), <https://www.reuters.com/investigates/special-report/usa-bodies-science/> [hereinafter *How an American*].
92. See, e.g., Michel Anteby, *A Market for Human Cadavers in All but Name*, HARV. BUS. SCH. (Nov. 5, 2009), <https://hbswk.hbs.edu/item/a-market-for-human-cadavers-in-all-but-name>; *Almost Anyone*, *supra* note 31.
93. *Almost Anyone*, *supra* note 31.
94. See Rajkumari Ajita & Ibochouba Singh, *Body Donation and Its Relevance in Anatomy Learning – A Review*, 56 J. ANATOMICAL. SOC'Y. INDIA 44, 45 (2007).
95. *Id.*
96. *Id.*
97. *Tissue Guidances*, FOOD & DRUG ADMIN., <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/Tissue/> (last visited Mar. 17, 2018).
98. See *Almost Anyone*, *supra* note 31.

supply of donated bodies is still much lower than the demand<sup>99</sup> and the lack of agency oversight allows body brokers to engage in unethical and sometimes illegal activity.<sup>100</sup>

As a business, body brokering can be very lucrative. One American company reportedly earns \$27 million annually,<sup>101</sup> with individual bodies fetching between \$10,000 and \$100,000.<sup>102</sup> Only four states keep stringent records of body donations and subsequent sales, so it is difficult to calculate the full economic value of the industry. Estimations of how many bodies are donated each year to private brokers range from 10,000 to 20,000 each year.<sup>103</sup> Body brokers don't just operate in the gap left by the UAGA's sections 11(a)(1) and 16(a); they are bolstered by express provisions of the law. Under section 16(b), a "person may charge a *reasonable amount* for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part."<sup>104</sup> Brokers not only benefit from donated inventory, but from being able to incorporate much of their overhead costs into their prices. From beginning to end, the donation process is relatively simple and straightforward, yet the UAGA allows for reasonable costs every step of the way.

## II. ABUSES IN THE INDUSTRY

Body brokers provide a needed service and make sure the limited resources get where they need to go. Most donated bodies are undoubtedly used for important research and can be seen as altruistic contributions to create a better future for society. Nonetheless, recent horror stories have brought to light major abuses within the industry that currently have almost no legal or practical remedy. For years, body brokers operated and thrived in the absence of agency oversight and

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99. R.McS, *supra* note 80.

100. See Brian Grow & John Shiffman, *In the U.S. Market for Human Bodies, Almost Anyone Can Dissect and Sell the Dead*, REUTERS (Oct. 24, 2017), <https://www.reuters.com/investigates/special-report/usa-bodies-brokers/> [hereinafter *In the U.S.*].

101. *How an American*, *supra* note 91.

102. Tresa Baldas, *Freezer Full of Body Parts Awaits Day in Court*, DETROIT FREE PRESS (Oct. 17, 2015), <http://www.freep.com/story/news/local/michigan/wayne/2015/10/17/probe-underground-body-brokers-leads-detroit/72621318/> [hereinafter *Freezer*].

103. *Almost Anyone*, *supra* note 31; Matt McCall, *The Secret Lives of Cadavers: How Lifeless Bodies Become Life-Saving Tools*, NAT'L GEOGRAPHIC (July 29, 2016), <https://news.nationalgeographic.com/2016/07/body-donation-cadavers-anatomy-medical-education/>.

104. REVISED UNIF. ANATOMICAL GIFT ACT § 16(b) (emphasis added) (UNIF. LAW. COMM'N 2006).

out of the public's eye. However, the federal investigation<sup>105</sup> of International Biological, Inc. in Detroit and Biological Resource Center in Phoenix shined a light on common abuses occurring all over the country. Newspapers were flooded with gruesome stories of chainsaw dissections and severed body parts.<sup>106</sup> The entire industry was put under the scrutiny of law enforcement agencies and legal pragmatists.

A. *International Biological Inc. Scandal*

In the 1980's Arthur Rathburn worked at the University of Michigan Medical School. His tasks included tagging and preparing corpses for students and arranging for the shipment of corpses to other medical schools and brokers.<sup>107</sup> He was fired from the University following allegations that he was secretly selling bodies for profit.<sup>108</sup> After his firing from the University, Rathburn became an independent body-broker in the state of Michigan. From 2007 to 2013, Rathburn and his wife, Elizabeth, owned and operated a body brokering corporation, International Biological Inc., based in the Detroit metropolitan area.<sup>109</sup> In the mid 2000's, Rathburn was reprimanded several times by New York state authorities for failing to provide documentation proving that the bodies in his possession were willingly donated.<sup>110</sup> Despite the red flags and indications of nefarious behavior, Rathburn was allowed to continue to operate his body brokering business. Rathburn finally raised the suspicions of federal authorities in 2010 when border agents discovered that packages containing human body parts were shipped to Rathburn from overseas.<sup>111</sup> In one instance, border agents questioned Rathburn about an intercepted shipment of ten severed heads from Canada.<sup>112</sup> After years of surveillance, the FBI

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105. See Polly Mosendz, *The FBI is Shutting Down Shady Cadaver Centers Left and Right*, ATLANTIC (Sep. 10, 2014), <https://www.theatlantic.com/national/archive/2014/09/the-fbi-is-shutting-down-shady-cadaver-centers-left-and-right/379967/>.

106. See, e.g., Tresa Baldas, *Feds: Grosse Pointe Cadaver Dealer Tied to 18 More Human Heads*, DETROIT FREE PRESS (Oct. 13, 2016, 12:04 AM), <https://www.freep.com/story/news/local/michigan/2016/10/13/feds-grosse-pointe-cadaver-dealer-tied-18-more-human-heads/91959862/>.

107. Lindsey Bever, *The Horrifying Case of the Husband-and-Wife Cadaver Dealers*, WASH. POST (Mar. 26, 2016), [https://www.washingtonpost.com/news/morning-mix/wp/2016/03/26/the-husband-and-wife-duo-who-allegedly-dismembered-diseased-bodies-and-sold-them-for-profit/?utm\\_term=.b7d758e33254](https://www.washingtonpost.com/news/morning-mix/wp/2016/03/26/the-husband-and-wife-duo-who-allegedly-dismembered-diseased-bodies-and-sold-them-for-profit/?utm_term=.b7d758e33254).

108. *Id.*

109. *Id.*

110. *Special Report*, *supra* note 1.

111. *Id.*

112. *Id.*

finally raided Rathburn's Detroit warehouse in December 2013. The FBI reports indicate that Rathburn had defrauded donors and their families, used unsanitary and improper techniques for tissue procurement and storage, and fraudulently sold and leased diseased body parts to medical schools and other research organizations.<sup>113</sup> Rathburn was charged with "defrauding customers by selling them body parts infected with hepatitis and HIV, and with lying to federal agents about shipments."<sup>114</sup>

*B. A Nationwide Scandal*

In the aftermath of the International Biological, Inc. scandal, outraged families of donors were left wondering how such grisly abuses were able to go unnoticed for so many years.<sup>115</sup> Families became desperate to know if their loved ones' donations had met similar fates. Without any oversight or mechanism to track the use of donated bodies, families could find no answers. The egregious Rathburn scandal is just one example of abuse that led to a greater investigation<sup>116</sup> of the little-known practices of body brokers.

In Illinois and Arizona, similar investigations and charges are currently in progress regarding other whole-body donation businesses.<sup>117</sup> Among the alleged misconduct is fraudulent inducement of donations, selling bodies against donors' express wishes to non-medical research organizations, and using unsafe methods for transporting and storing hazardous material.<sup>118</sup> On February 2, 2015, the FBI unsealed a thirteen-count federal indictment that, *inter alia*, mentions the grisly and fraudulent operations of two Illinois businesses that engaged in illegal trafficking of human remains.<sup>119</sup> Among the many victims of the illegal activity was an Illinois mother who donated her son's body to one of the indicted body brokers. She was told that her son's body would be handled with care and donated to a local college research

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113. *Id.*

114. Steve Friess & John Shiffman, *FBI Agents Describe Grisly Warehouse in Start of Body Broker's Trial*, REUTERS (Jan. 5, 2018), <https://www.reuters.com/article/us-usa-bodies-trial/fbi-agent-describes-grisly-warehouse-in-start-of-body-brokers-trial-idUSKBN1EU1V8>.

115. *Special Report*, *supra* note 1.

116. *See Almost Anyone*, *supra* note 31.

117. *See Freezer*, *supra* note 102.

118. Becky Yerak, *Mom Who Donated Son's Body to Science Alleges Remains Were Illegally Trafficked*, CHI. TRIBUNE (Apr. 20, 2017), <http://www.chicagotribune.com/business/ct-body-part-trafficking-lawsuit-0420-biz-20170419-story.html>.

119. *See Jean Lotus, FBI Indicts Couple in Body-Parts Investigation*, COOK COUNTY CHRON. (Feb. 3, 2016), <http://chronicleillinois.com/news/cook-county-news/fbi-indicts-couple-in-body-parts-investigation/>.



center. The FBI investigation, however, uncovered an invoice that showed her son's body had been sold to an international body broker for \$5000.<sup>120</sup> Law enforcement and investigative journalism efforts have recently unearthed many abuses perpetrated by private body brokers; unfortunately, these high profile cases may only constitute a small percentage of the abuses that are common practice in the industry.

*C. Problematic Practices*

While there are a myriad of unethical decisions and actions on the part of the indicted body brokers, the FBI focused on three potential crimes: 1) deceiving donors by dismembering body parts and selling them for profit; 2) bodies being sold for research expressly prohibited by the donors or families; and 3) selling bodies and body parts contaminated with disease.<sup>121</sup> Under the current statutory framework, such conduct is nearly impossible to regulate. Once a body is donated to a body broker, the family has no prescribed method to discover how the donation was eventually used. Also, families are not notified if the body is dismembered, kept intact, leased to multiple users, transported out of state or country, or ultimately destroyed.

The ever-present shortage of donated bodies makes abuses even more difficult to detect. Research organizations that purchase the bodies from brokers are often so desperate for inventory that they exercise little caution towards how donations were procured.<sup>122</sup> This is especially dangerous in a business like whole-body donation, where the supply is very limited and there is an implicit and unspoken understanding between suppliers and purchasers to engage in a "don't ask, don't tell" policy regarding the procurement of cadavers.<sup>123</sup> Businesses lacking the resources to procure their own bodies will often lack the resources to determine whether purchased bodies have been properly donated, screened, or documented. Some body brokers, like Rathburn, try to pass along diseased bodies and parts to unsuspecting purchasers who won't likely test donations they receive.<sup>124</sup> Without stricter regulations and proper oversight, abuses in the industry will continue to go undetected and unpunished.

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120. Christopher Placek, *Affidavit Details Why FBI Raided Rosemont Body Donation Firm*, DAILY HERALD, <https://www.dailyherald.com/article/20150319/news/150318601/> (last updated Mar. 20, 2015).

121. John Shiffman & Brian Grow, *The Body Trade*, REUTERS (Oct. 31, 2017), <https://www.reuters.com/investigates/special-report/usa-bodies-rathburn/>.

122. *Almost Anyone*, *supra* note 31.

123. *In the U.S.*, *supra* note 100.

124. Jean Lotus, *FBI Indicts Couple in Body-Party Investigation*, COOK COUNTY CHRONICLE (Feb. 3, 2016), <http://chronicleillinois.com/news/cook-county-news/fbi-indicts-couple-in-body-parts-investigation/>.

### III. INADEQUACIES OF EXISTING LAW

In addition to abuses being almost impossible to detect and prevent, there are very few legal remedies available to the families of donors whose bodies are misused. Losing a beloved member of one's family is a grievous and often traumatic experience in life. Most cultures hold funeral services or wakes to celebrate the lives and mourn the passing of a family member; this process helps grieving individuals and families to feel that they have laid their loved ones to rest.<sup>125</sup> When families find out that their loved ones' remains have been disrespected and abused by body brokers, they can feel like they have "lost . . . [them] all over again."<sup>126</sup> Families who seek justice for their loved ones are discouraged when they discover that there is virtually no adequate legal remedy for their emotional anguish and suffering.

#### A. Common Law

American common law is founded in tradition but is malleable enough to evolve over time and shift towards modern societal principles and values.<sup>127</sup> Unfortunately, this process takes time and is the result of many court decisions in a particular area.<sup>128</sup> The scandals brought to light in the whole-body donation industry prove to be too new to be properly addressed by any existing body of common law.

#### 1. Property Law

The absence of rights and protections under traditional property law make cases against body brokers extremely difficult. Legal academics often conceptualize property interests as a bundle of sticks.<sup>129</sup> Stronger property interests have more "sticks" or rights, such as exclusion or alienation.<sup>130</sup> In the case of deceased bodies, the metaphorical bundle of sticks of rights attached is reduced to nothing more than a few twigs. American courts have refused to recognize that

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125. See, e.g., Romeo Vitelli, *Can Rituals Help Us Deal With Grief?*, PSYCHOL. TODAY (Mar. 31, 2014), <https://www.psychologytoday.com/blog/media-spotlight/201403/can-rituals-help-us-deal-grief>.

126. *Freezer*, *supra* note 102.

127. See Allan C. Hutchinson, *Work-in-Progress: Evolution and Common Law*, 11 TEX. WESLEYAN L. REV. 253, at 254, 257-258 (2005).

128. See *id.* at 225.

129. See Jane B. Baron, *Rescuing the Bundle-of-Rights Metaphor in Property Law*, 82 U. CIN. L. REV. 57-59 (2014).

130. See *Property*, INTERNET ENCYCLOPEDIA OF PHIL., <https://www.iep.utm.edu/prop-con/#H2> (last visited Oct. 29, 2018).

the next of kin has a property interest in a corpse.<sup>131</sup> Rather, courts have granted quasi-property rights to the next of kin, such as the right to have the body buried and the right to have the resting place of the body be undisturbed.<sup>132</sup> However, even these limited rights can be superseded by the exercise of government policing power in the furtherance of public health and safety.<sup>133</sup>

The next of kin are also given legal authorization to donate a deceased body.<sup>134</sup> The UAGA provides for a statutory hierarchy to determine who can grant legal authorization to donate a body.<sup>135</sup> Federal law prohibits sale of organs and tissues for transplantation.<sup>136</sup> But there is no such prohibition on selling cadaveric tissues or body parts for research and education. While body brokers may sell donated bodies, next of kin cannot receive compensation for the donations. Existing case law has prohibited next of kin from bringing conversion of property cases against those who illegally obtain human remains.<sup>137</sup> In *Granato*, the court concluded that the petitioner's asserted property rights in her husband's body was not "clearly established" under either the U.S. or Ohio State Constitutions.<sup>138</sup> Families of donors have no traditional property cause of action for conversion against body brokers for the abuse or fraudulent sale of a donor's remains.

## 2. Contract Law

Contract law is also an ineffective avenue for victimized families seeking legal remedies. All body brokers require donors, or those with legal authority, to execute one of their donation forms in order to make a donation. These forms are treated like a typical contract under common law, and the UAGA favors enforcing donation forms against ambiguities.<sup>139</sup> In accordance with the purpose of generating more donations, the UAGA makes making a donation easier, revocation of a donation by the next of kin more difficult, and excuses would-be

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131. See R. Alta Charo, *Skin and Bones: Post-Mortem Markets in Human Tissue*, 26 NOVA L. REV. 421, 431 (2002).

132. *In re Estate of Moyer*, 577 P.2d 108 (Utah Sup. Ct. 1978).

133. *Id.*

134. REVISED UNIF. ANATOMICAL GIFT ACT § 9(a) (UNIF. LAW. COMM'N 2006).

135. *Id.*

136. National Organ Transplantation Act, S.B. 2228, 106th Cong. (1984).

137. *Granato v. Davis*, 2014-Ohio-5572 (2d Dist. Court of Appeals); *Culpepper v. Pearl St. Bldg., Inc.*, 877 P.2d 877 (Colo. 1994).

138. *Granato*, 2014-Ohio-5572 at \*1.

139. REVISED UNIF. ANATOMICAL GIFT ACT at § 8(a) (UNIF. LAW. COMM'N 2006).

violators that attempt to act in good faith.<sup>140</sup> Misuse of the body, such as selling a body to a non-medical research project against the express wishes of the donor, would amount to a breach of contract. Yet, next of kin would face nearly insurmountable hurdles in bringing a breach of contract case against a body broker.

Learning of the breach of contract is the first and most daunting hurdle. Unless called for specifically by the donation contract, body brokers are not obligated to disclose to the next of kin what happens to a donated body once they receive it. Certain businesses do offer to reach out to families to relay this information,<sup>141</sup> but this is done as a courtesy rather than a mandatory obligation. More commonly, after brokers receive the gifted body, they have no further contact with the donor's family. Short of a full investigation, families may never learn what became of their loved ones' bodies. Even if a breach of contract can be discovered, there are not many equitable remedies available under common law. Equitable remedies under contract law include restitution, rescission, and specific performance.<sup>142</sup> Each of these principles of remedy would be nearly impossible to apply, in particular when bodies are dismembered or shipped overseas and cannot be recovered. In addition, the next of kin would not have privity,<sup>143</sup> or legal standing as a party to the contract, unless they signed the donation form. Without standardized forms and statutory remedies, contract law does not provide adequate relief to families of donors.

### 3. Tort Law

Tort law may provide the best avenue for victimized families seeking a legal remedy; although, it is still extremely limited. There is some precedent regarding suits of negligent infliction of emotional distress caused by the mishandling of body parts.<sup>144</sup> In *Gammon v. Osteopathic Hospital of Maine, Inc.*, a son was sent a box from the hospital labeled "personal effects," which were supposed to be the personal effects of his recently deceased father.<sup>145</sup> Instead of personal

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140. *Id.* at § 18(a).

141. *Body Donation Process*, *supra* note 33.

142. RESTATEMENT (SECOND) OF CONTRACTS § 345 (AM. LAW INST. 1981).

143. Privity is a legal relationship between two or more parties involved transaction. *Privity*, WOLTERS KLUWER BOUVIER LAW DICTIONARY (Desk ed. 2012).

144. *Gammon v. Osteopathic Hospital of Maine, Inc.*, 534 A.2d 1282, 1286 (Maine 1987); *Christensen v. Superior Court*, 54 Cal.3d 868, 882-83 (1991); *Winkle v. Zettler Funeral Homes, Inc.*, 182 Ohio App.3d 195, 206 (12th Dist. 2009).

145. *Gammon*, 534 A.2d at 1283.

items, the box contained one of his father's severed limbs.<sup>146</sup> The son was able to successfully prevail on his claim of negligent infliction of emotional distress (NIED) against the hospital. The court reasoned that "the exceptional vulnerability of the family of recent decedents makes it highly probable that emotional distress will result from mishandling the body."<sup>147</sup> However, not all courts find the emotional distress element satisfied so easily. In *Powell v. Grant Med. Ctr.*, plaintiff children failed in their claim of tortious infliction of emotional distress when a funeral home mishandled and abused their mother's corpse.<sup>148</sup> Even in light of expert medical testimony of their anguish, the judge held, "plaintiffs failed to establish that the anger, grief, upset, and other emotional distress they allegedly suffered was *both severe and debilitating*."<sup>149</sup> NIED claims are extremely difficult for plaintiffs to prevail on because a plaintiff has the burden of showing *significant* emotional distress.<sup>150</sup>

Section 18 of the UAGA makes plaintiffs' already difficult NIED claims even less likely to succeed. Subsection 18(a) states "[a] person that acts in accordance with this [Act] or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding."<sup>151</sup> In addition to the burden of showing significant emotional distress, plaintiffs would also require evidence showing bad faith on the part of the abuser. In the comments to section 18, the NCCUSL makes clear that the immunity provision "merits genuinely liberal interpretation to effectuate the purpose and intent of Uniform Act" to facilitate organ and tissue donations.<sup>152</sup> The lack of litigation involving private body brokers is a sign of overly burdensome evidentiary thresholds and a liberal interpretation of section 18. Furthermore, monetary awards to victims do not address the main obstacle of actually discovering abuses.

#### B. UAGA

The 2006 revision of the UAGA attempts to address some potential abuses commonly perpetrated by body brokers,<sup>153</sup> but it is not

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146. *Id.*

147. *Id.* at 1285.

148. *Powell v. Grant Med. Ctr.*, 148 Ohio App. 3d 1, 2 (10th Dist. 2002) (emphasis added).

149. *Id.* at 8.

150. *Gammon*, 534 A.2d at 1284; *Winkle*, 912 N.E.2d at 206; *Powell*, 148 Ohio App. 3d at 9.

151. REVISED UNIF. ANATOMICAL GIFT ACT at § 18 (UNIF. LAW. COMM'N 2006).

152. *Id.* at § 18 cmt.

153. *Id.* at § 17 cmt.

comprehensive or detailed enough. As discussed in Part II, section 16 prohibits the sale of “part[s] for transplantation or therapy” but does not apply to sales of cadaveric tissues for research or education.<sup>154</sup> Section 17, entitled “Other Prohibited Acts” is new to the 2006 revision and was added to address “abuses that have been widely reported” in the donation industry.<sup>155</sup> Section 17 criminalizes intentional falsification of documents of gift in order to obtain a financial gain.<sup>156</sup> Conviction for falsifying gift documents is punishable by a fine of no more than \$50,000, imprisonment for no more than five years, or both.<sup>157</sup> Section 17 is a step in the right direction to properly regulate body brokers and protect donors. However, it is concerned only with the process of making a donation and does not address abuses that occur when brokers mishandle properly donated bodies.

In addition, the UAGA does not provide for any disclosure requirements on donation forms or on advertisements. Under the UAGA, there are also no requirements regarding the substantive information that must be included on donation forms. Examples of donation cards, known as documents of gift, are illustrated in the comments to section 5.<sup>158</sup> The comments to section 5 mention that the drafting committee did not want to make a mandatory template card part of the Act, but rather decided to provide “suggested forms consistent with” the UAGA.<sup>159</sup> But the sample cards are overly simplistic and only identify the intent of the donor to make a gift. There is no substantive information regarding donors’ rights or any disclosures. Most importantly, the UAGA also does not provide a mechanism for oversight over the industry. As currently constructed, the UAGA inadequately addresses abuses in the industry.

### *C. Criminal Punishment*

Criminal charges can act as a deterrent, but, without regular police oversight or investigation, violations are rarely discovered or prosecuted. UAGA section 17 prescribes criminal penalties for body brokers who obtain bodies through fraudulent gift documents.<sup>160</sup> Before the addition of Section 17, such violations often went unpunished. In Arthur Rathburn’s case, he was cited several times over several years

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154. *Id.* at § 16.

155. *Id.* at § 17 cmt.

156. *Id.* at § 17.

157. *Id.*

158. *Id.* at § 5 cmt.

159. *Id.*

160. *Id.* at § 17.

for not having proper gift documents for all of his inventory.<sup>161</sup> Still, he was permitted to continue his practice and subsequently committed much more serious abuses.<sup>162</sup> Mandating criminal punishment is only half the equation; the law must designate an agency or some other type of oversight mechanism to ensure criminal behavior is actually punished and thus deterred.

#### IV. RECOMMENDATIONS

Recent scandals in the whole-body donation industry have alienated many potential donors and diminished an already inadequate supply of donated bodies.<sup>163</sup> Recommendations to restore the integrity of the industry must be oriented to gaining the public's trust without overburdening businesses with compliance costs. The main areas where the industry can make vital improvements are transparency and accountability; however, changes should be made without sacrificing uniformity. The best vehicle for improvement is a revised and amended version of the UAGA that offers greater transparency and protection for donors, adopted by every state without modification.

Andrew Smith famously said, “[p]eople fear what they don’t understand . . . .”<sup>164</sup> Over the last decade, journalists, authors, and others have sought to understand the mysteries of the whole-body donation industry. Unfortunately, the horror stories of a few bad actors<sup>165</sup> have given the entire industry a bad reputation. Some studies have even shown that learning more about how donated bodies are used can actually decrease donations.<sup>166</sup> But, most whole-body donation businesses provide excellent service and aid in crucial medical and non-

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161. John Shiffman & Brian Grow, *In a Warehouse of Horrors, Body Broker Allegedly Kept Human Heads Stacked on His Shelves*, REUTERS INVESTIGATES (Oct. 31, 2017, 11:00 AM), <https://www.reuters.com/investigates/special-report/usa-bodies-rathburn/> [hereinafter *Warehouse*].

162. *Almost Anyone*, *supra* note 31; *Warehouse*, *supra* note 161.

163. *See, e.g.*, Kate Willson, *Abusing the ‘Gift’ Of Tissue Donation*, HUFFINGTON POST, [https://www.huffingtonpost.com/icij/tissue-donation\\_b\\_1676671.html](https://www.huffingtonpost.com/icij/tissue-donation_b_1676671.html) (last updated Sept. 18, 2012).

164. Andrew Smith, GOODREADS, <https://www.goodreads.com/quotes/612917-people-fear-what-they-don-t-understand-and-hate-what-they>.

165. *How the Body*, *supra* note 2.

166. *See* Kevin C. Cahill & Raj R. Ettarh, *Student Attitudes to Whole Body Donation Are Influenced by Dissection*, 1 ANATOMICAL SCI. EDU. 212, 214 (2008).

medical research.<sup>167</sup> Licensing body brokers and body purchasers, implementing agency oversight, and creating a nationwide collaborative database are all ways to increase transparency and accountability within the industry.

*A. Licensing Body Brokers and Purchasers*

One major flaw of the UAGA is that it allows almost anyone to receive and subsequently purchase donated bodies.<sup>168</sup> Very few states have amended the UAGA to require that body brokers be accredited or licensed.<sup>169</sup> Additionally, most states do not require any screening or licensing for purchases of body parts. In an investigation to determine the ease with which body parts could be purchased, a Reuters journalist was able to purchase a cervical spine for \$300 from a body broker via a few informal email exchanges.<sup>170</sup> The purchased parts were inspected by the director of the body donation program at the University of Minnesota, who concluded “the medical history . . . provided was insufficient, and that the accompanying paperwork was sloppy and inadequate.”<sup>171</sup> Those involved with legitimate procurement programs, like Dr. Todd R. Olson, former director of Albert Einstein College’s body donation program, marvel at how easily body parts can be purchased. He commented, “[t]here is more regulation about shipping a head of lettuce out of California than shipping a human head.”<sup>172</sup> Some states have attempted to respond to the growing number of scandals by passing new laws. Arizona Governor Doug Ducey signed a new law requiring government licensing and accreditation of all tissue banks.<sup>173</sup> However, some skeptics believe the new law is too narrow because it

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167. See Alyse Bernal, *The Gift of Life: What to Know About Organ Donation and Transplant*, SEATTLE CHILDREN’S (Apr. 30, 2015), <http://pulse.seattlechildrens.org/the-gift-of-life-what-to-know-about-organ-donation-and-transplant/>; See Henry Alan Wingfield, *Body Donation Today: A Critical Comparison of Two Current Practices, and Moving into the Future*, 31 CLIN. ANAT. 86-88 (2018).

168. *Almost Anyone*, supra note 31; REVISED UNIF. ANATOMICAL GIFT ACT § 11.

169. *Almost Anyone*, supra note 31.

170. Brian Grow & John Shiffman, *A Reuters Journalist Bought Human Body Parts, Then Learned a Donor’s Heart-Wrenching Story*, REUTERS INVESTIGATES (Oct. 25, 2017), <https://www.reuters.com/investigates/special-report/usa-bodies-cody/>.

171. *Id.*

172. Ky Henderson & Iris Xu, *More Life-Saving Research, Fewer Chainsaw Dissections: The Body-Donation Industry Fights to Clean Up*, VICE NEWS (May 31, 2016, 12:30 PM), <https://news.vice.com/article/donating-body-to-science-industry-cleans-up>.

173. *Id.*; H.B. 2307, 52d Leg., 2d Sess. (Ariz. 2016).



excludes university programs.<sup>174</sup> Their argument is validated in light of several university programs that have recently been implicated in misuse and abuse of donated bodies.<sup>175</sup>

The UAGA should be amended to require that *all* whole-body donation organizations, including university programs, be accredited and properly licensed by their respective states. Large, nationwide businesses should be required to be licensed in every state in which they operate to prevent forum shopping for states that either have not adopted the UAGA or that opt for more lenient licensing requirements. Licensing would require an organization to follow the application requirements prescribed by the appropriate state government entity. For example, in California, the California Department of Public Health Laboratory Field Services is tasked with surveying and licensing tissue bank facilities in the state.<sup>176</sup> For accreditation, the UAGA should adopt the standards<sup>177</sup> outlined by the American Association of Tissue Banks (AATB), the largest accrediting organization in the whole-body donation industry.<sup>178</sup> The AATB has an extensive accreditation process which includes meeting all applicable health and safety regulations, as well as unannounced inspections of the applicant's facilities.<sup>179</sup> This solution creates a uniform standard for licensing without overburdening organizations which have already been accredited by the AATB or other reputable organizations. Requiring brokers and donation programs to be licensed will increase the professionalism, health and safety standards, and credibility of the industry.

In addition to procurement organizations, the UAGA should also require that purchasers of donated bodies and body parts are properly licensed. Section 11 requires that any medical, dental, or other college that receive donations be properly accredited.<sup>180</sup> Yet, that same standard is not extended to any other person that is able to receive an

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174. Henderson & Xu, *supra* note 172.

175. *See id.*; see also Robin Gerber, *The Case of Misused Corpses*, AARP (Dec. 13, 2010), [https://www.aarp.org/politics-society/rights/info-12-2010/the\\_case\\_of\\_the\\_misused\\_corpses.html](https://www.aarp.org/politics-society/rights/info-12-2010/the_case_of_the_misused_corpses.html).

176. *Laboratory Field Services: Tissue Bank*, CAL. DEP'T OF PUB. HEALTH, <https://www.cdph.ca.gov/Programs/OSPHLD/LFS/Pages/TissueBank.aspx> (last visited May 12, 2018).

177. *See generally Accreditation Policies*, AMERICAN ASSOCIATIONS OF TISSUE BANKS, 5 (Feb. 8, 2018), [https://images.magnetmail.net/images/clients/AATB/attach/Bulletin\\_Links/18\\_2/AATB\\_Accreditation\\_Policies\\_February\\_08\\_2018.pdf](https://images.magnetmail.net/images/clients/AATB/attach/Bulletin_Links/18_2/AATB_Accreditation_Policies_February_08_2018.pdf).

178. *About Us*, AMERICAN ASSOCIATION OF TISSUE BANKS, <https://www.aatb.org/?q=about-us> (last visited Mar. 18, 2018).

179. *See Accreditation Policies*, *supra* note 177, at 27.

180. REVISED UNIF. ANATOMICAL GIFT ACT § 11(a)(2) (UNIF. LAW. COMM'N 2006).

anatomical gift under the section.<sup>181</sup> Some states have even broadened the scope of who may purchase bodies. The relevant Illinois law states, “any specified individual for therapy or transplantation needed by him or her, *or for any other purpose*” may purchase body parts.<sup>182</sup> The UAGA should extend the licensing standard to all intermediate and end purchasers of anatomical gifts, and define “appropriate person for research or education” to include only bona fide programs and projects that are properly licensed, trained, and equipped to receive and handle cadaveric tissue. Requiring licensing from all whole-body donation sellers and buyers will provide clear and uniform standards, increase the credibility of the entire industry, and ensure donations are treated with dignity.

*B. Agency Oversight*

Without oversight from a government agency, the UAGA will continue to be unenforced and ineffective at preventing abuses. Although organizations like the AATB have adequate standards and requirements for accreditation, their standards are not well regulated beyond their initial inspections.<sup>183</sup> The UAGA should be amended to grant a local government agency power to enforce its provisions. Arizona, for example, grants a government agency power to oversee the whole-body donation industry within the state. In a 2016 amendment to the UAGA, the Arizona Department of Health Services (ADHS) was tasked with licensing all tissue banks.<sup>184</sup> In addition to licensing tissue banks, ADHS was also authorized to conduct random unannounced inspections of tissue bank facilities.<sup>185</sup> Local government agencies should have the authority to conduct inspections, issue citations and fines,

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181. *Id.* at § 11.

182. Ill. Anatomical Gift Act, 755 ILCS §50/5-10 (repealed Jan. 1, 2014); Christina Cotter, *Comparison of UAGA (2006) with Existing Illinois Law*, ULC (Aug. 4, 2008), <https://www.midamericatransplant.org/uploads/2011/01/07/uaga-ilcomparison.pdf>.

183. *Accreditation*, AMERICAN ASSOCIATION OF TISSUE BANKS, <https://www.aatb.org/?q=accreditation> (last visited Mar. 19, 2018); *see also* Henderson & Xu, *supra* note 172. Although reinspection occurs every three years, the AATB does not regulate or oversee the organization to ensure it maintains the AATB’s standards during the three-year period between accreditation renewals. Theoretically, an organization could pass an initial inspection and then run a corrupt business with low standards for three years. They can then “clean up” on the surface level to pass their renewal inspection and slide back to dishonest business practices immediately following the renewal. The long period between inspections and knowledge of when they will occur currently contribute to the success of dishonest businesses in this field.

184. H.B. 2307, 52d Leg., 2d Sess. (Ariz. 2016).

185. *Id.*

revoke licenses, and cooperate in criminal investigations. Consistent randomized oversight coupled with strict punishments for violations will decrease the abuses in the industry. Amending the UAGA to grant licensing and regulatory powers to local agencies is the best way to enforce the Acts provisions and safeguard donors.

Government oversight may increase body brokers' operating costs, but it is essential to curtailing abuses. Many economists theorize increasing government regulation over an industry decreases productivity by increasing compliance costs, especially among small businesses.<sup>186</sup> Requiring licensing and agency oversight may have a negative effect on smaller local body brokers. Gaining accreditation and passing inspections will require proper equipment<sup>187</sup> for storage and transportation, accreditation and licensing fees,<sup>188</sup> and increased training for employees.<sup>189</sup> While the increased compliance costs may create a financial strain on smaller body brokers, agency regulation is vital to ensuring adherence to the UAGA.

### C. Public Database

A nationwide database for whole-body donations would give the industry greater transparency, increase purchasers' access to donations, and make illegal transactions easier to detect. While NOTA has no shortage of critics, it has much to offer as a model for the UAGA. NOTA establishes a nationwide network for organ procurement, the Organ Procurement and Transplant Network (OPTN).<sup>190</sup> The nationwide collaboration orchestrated under NOTA has maximized the availability of organs for transplants, minimized waste, and helped the

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186. See C. Steven Bradford, *Does Size Matter? An Economic Analysis of Small Business Exemptions from Regulation*, 8 J. SMALL & EMERGING BUS. L. 1, 8-9 (2004); see Robert W. Hahn & John A. Hird, *The Costs and Benefits of Regulation: Review and Synthesis*, 8 YALE J. OF REG. 233, 247 (1991); see also P. Fenn & C. G. Veljanovski, *A Positive Economic Theory of Regulatory Enforcement*, 98 ECON. J. 1055, 1055 (1988).

187. See e.g., *Cadaver Handling & Storage*, MORTECH MANUFACTURING INC., <https://mortechmfg.com/collections/cadaver-handling-storage> (last visited Mar. 19, 2018); See *Manufacturer of Morgue, Autopsy and Laboratory Equipment*, CSI/JEWETT, <http://csi-jewett.com/> (last visited Mar. 19, 2018); J. Gilbody et al., *The Use and Effectiveness of Cadaveric Workshops in Higher Surgical Training: A Systematic Review*, 93 ANNALS ROYAL COLL. SURGEONS ENG. 347 (2011).

188. H.B. 2307, 52d Leg., 2d Sess. (Ariz. 2016); See *Accreditation Policies*, *supra* note 177, at 28.

189. See Artur Kaminski et al., *Tissue Bank Training Courses: Polish Experience*, 14 CELL TISSUE BANK 141, 142 (2013).

190. National Organ Transplantation Act, S.B. 2228, 106th Cong. (1984); *About the OPTN*, OR. PROCUREMENT & TRANSPLANT NETWORK, <https://optn.transplant.hrsa.gov/> (last visited Mar. 19, 2018).

transactions within the industry be more transparent.<sup>191</sup> When a person registers as a transplant organ donor in the United States, their name is typically added to the OPTN database.<sup>192</sup> That database can be accessed by organ procurement organizations and hospitals all over the country.<sup>193</sup> Studies have shown that access to a collaborative donor database increases the availability of donated organs and tissues.<sup>194</sup> A parallel nationwide network database for non-transplant donations could produce similar benefits. Any licensed purchaser that requires the use of cadaveric material could post a “need” on the database. Procurement organizations and body brokers could better allocate the limited resources to those listed in the database. A nationwide database would also increase availability of donations across state lines.

In addition to facilitating access to donations, a national database could also be utilized to track all subsequent transfers of body parts. UAGA section 20 suggests that each state create their own database with the help of local agencies, such as the Department of Motor Vehicles.<sup>195</sup> The comments to section 20 explain that the purpose of this section is to “facilitate the making of anatomical gifts.”<sup>196</sup> However, in light of the recent scandals, the database could also be used to detect unauthorized and illegal transactions. The database would operate much like a gun registration database.<sup>197</sup> In California, guns are registered with the California Bureau of Firearms using a gun’s unique serial number.<sup>198</sup> Any time a registered gun transfers possession, the registry is updated to list the current owner. Potential purchasers of

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191. See Thomas R. Wojda et al., *Keys to Successful Organ Procurement: An Experience-Based Review of Clinical Practices at a High-Performing Health-Care Organization*, 7 INT’L J. CRITICAL ILLNESS & INJURY SCI. 91, (2017).

192. *Data*, ORGAN PROCUREMENT AND TRANSPLANT NETWORK, <https://optn.transplant.hrsa.gov/data/> (last visited Mar. 19, 2018); See *OPTN Database*, ORGAN PROCUREMENT & TRANSPLANTATION NETWORK, <https://optn.transplant.hrsa.gov/data/> (last visited Mar. 19, 2018).

193. *Request Data*, ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK, <https://optn.transplant.hrsa.gov/data/> (last visited Oct. 20, 2018).

194. PENNSYLVANIA ORGAN DONATION ADVISORY COMMITTEE 2016 ANNUAL REPORT, ORGAN DONATION ADVISORY COMMITTEE at 4 (2016), *available at* <https://www.health.pa.gov/topics/Documents/Programs/Organ%20Donation/2016%20Organ%20Donation%20Report.pdf>.

195. REVISED UNIF. ANATOMICAL GIFT ACT § 20(a) (UNIF. LAW. COMM’N 2006).

196. *Id.* at § 20 cmt.

197. See, e.g. FIREARMS INFORMATION FOR NEW CALIFORNIA RESIDENTS, STATE OF CAL. DEP’T JUSTICE, *available at* <https://oag.ca.gov/firearms/ab99>.

198. See *id.*

firearms are able to crosscheck serial numbers on the database to ensure guns are not stolen or unregistered. Police also have access to the database to investigate illegal transactions.<sup>199</sup> Keeping detailed records of firearm transactions can reduce the number of gun-related crimes.<sup>200</sup>

Like firearms, donated bodies should be registered, and all transactions of bodies should be recorded in detail. Currently, only a handful of states keep records of body sales.<sup>201</sup> Upon donation, donors would receive a unique identification number to track their donation while still protecting their privacy. When the donation is received, the receiving organization would then be obligated to update the database to indicate their current possession. Purchasers of bodies should also be required to check the database to ensure that a body was properly donated, registered, and is transferrable. In addition to amending the UAGA to require procurement organizations to use a database, another provision should require that researchers and end-purchasers of bodies and body parts verify purchases through the database. Charging brokers and purchasers a reasonable fee for posting on the database could provide funding for maintenance and upkeep. Databases may also be eligible for federal grants.<sup>202</sup> The U.S. Department of Health & Human Services regularly awards grants to promote effective state donor registry systems.<sup>203</sup> Making the database accessible to the next of kin through a secured login would allow families to track their loved ones' donations and make inquiries when unauthorized transactions are suspected. A national database increases accessibility to donations, gives the industry greater transparency, and makes abuses and violations easier to detect and prevent.

## V. CONCLUSION

Whole-body donation is an extremely important industry for both medical and non-medical research.<sup>204</sup> Attempts to prevent abuses in the industry should not unduly hinder the supply of donations, because body donations play a vital role in medical research, surgery training,

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199. See Dennis Romero, *Why California Has Lots of Firearms but Relatively Low Gun Violence*, L.A. WEEKLY (Oct. 9, 2017), <https://www.laweekly.com/news/california-gun-sales-are-strong-but-so-are-its-laws-8728834>.

200. *Id.*

201. *How the Body*, *supra* note 2.

202. PROJECT SUMMARIES: STATE DONOR REGISTRY SUPPORT PROGRAM, U.S. DEP'T HEALTH & HUM. SERV., *available at* <https://www.organdonor.gov/about-dot/grants/programs/state-donor.html>.

203. *Id.*

204. See Danny Kingsley, *Donating Your Body*, ABC SCIENCE (May 27, 2004), <http://www.abc.net.au/science/articles/2004/05/27/2857045.htm>.

and a wide array of other research projects.<sup>205</sup> Whole-body donations fall under state UAGA statutes<sup>206</sup> but most states lack an adequate system for enforcement.<sup>207</sup> Under the current regulatory regime, abuses of donated bodies,<sup>208</sup> cannot be properly prevented or remedied. American Common Law, current UAGA statutes, and criminal punishment for violations, have all proven insufficient to prevent unethical practices among body brokers. Amending the UAGA to create more transparency and accountability will help restore trust in the whole-body donation industry.

Requiring licensing and accreditation of body brokers will create a uniform standard and ensure only qualified business are able to obtain donations. Granting a government agency authority to oversee the industry will deter illegal activity and punish violations. Periodic arbitrary inspections of licensed brokers will result in greater compliance with all proscribed health and safety standards. A public database will give the once-mysterious industry transparency and further make transactions and other abuses easier to detect. An updated and improved version of the UAGA will be most effective if it is adopted by every state without modification. The NCCUSL should analyze which states' versions of the UAGA have been effective, which ones have been ineffective, and then revise the UAGA to prevent further abuses in the whole-body donation industry.

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205. Wong, *supra* note 26.

206. REVISED UNIF. ANATOMICAL GIFT ACT § 9 cmt (UNIF. LAW. COMM'N 2006).

207. *Almost Anyone*, *supra* note 31.

208. *Id.*