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CITY BAR

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**REPORT ON LEGISLATION BY
THE COMMITTEE ON HEALTH LAW**

**A.10039
S.7103**

**M. of A. Ortiz
Sen. Carlucci**

AN ACT to amend the public health law, the election law and the vehicle and traffic law, in relation to establishing Lauren's law.

THIS BILL IS APPROVED WITH RECOMMENDATIONS

A. The Health Law Committee Endorses the Bill

The Health Law Committee of the New York City Bar Association supports A.10039/S.7103 (the "Proposed Act"), and suggests two modifications that the Committee believes would enhance the bill's impact. The Association is an organization of over 23,000 lawyers and judges dedicated to improving the administration of justice. The members of the Health Law Committee include attorneys, physicians and in-house hospital counsel who confront issues surrounding medical decision-making. The Association has always taken an interest in the legal, social and public policy aspects of medical care and public health issues, and through various committees, regularly issues reports and policy statements, and testifies at hearings.

With advances in medicine, organ transplantations are increasingly successful and save many lives. However, a potential organ recipient's access to a donated organ depends upon the current supply of transplantable organs. This supply, in turn, depends upon the number of organ donors. Today, the number of those in need of an organ donation far outnumbers the current supply of organs that can be donated at a given time. Approximately 110,000 people nationwide are in need of organ transplants.¹ In the New York Metropolitan area alone, there are 8,000 individuals in need.² Unfortunately, New York State is failing to adequately respond to that need. In 2010, New York ranked last in the country for the number of new donors, at only 13%³ compared to Alaska at 76% and Colorado at 64%, the two highest in the country.⁴

¹ "Conte Urges Assembly to Pass Lauren's Law," NewsLI.com (2011). Online publication at: <http://www.newsli.com/2011/04/18/contе-urges-assembly-to-pass-laurens-law/>. (Last visited May 24, 2012.)

² *Id.*

³ *Id.* (During 2010, 13% of people who obtained driver's licenses and state-issued identification cards were registered donors in New York State.)

⁴ "Donor Alliance Reports Growing Organ and Tissue Donation Rates in Colorado and Wyoming in 2011," *see* http://www.bizjournals.com/prnewswire/press_releases/2012/01/18/LA37738. (Last visited May 25, 2012.)

The Health Law Committee believes that the Proposed Act would help to increase organ-donor enrollments throughout the state by increasing the opportunities for donors to enroll in the state organ donor registry, thereby increasing the supply of available organs for transplantation.

B. Current Law

New York Public Health law Section 4310, Subdivision 2 currently states that registration of consent to make an anatomical gift can be made through indication on an application or renewal of a driver's license, non-driver identification card, enrolling in the registry website including using an electronic signature, through indication on a voter registration form or through any other method identified by the State Health Commissioner for the New York State Department of Health. Under the current law, applicants are not *required* to fill out the organ donation section on any of these applications or forms.

By not requiring applicants to fill out the organ donation section, registrants may avoid the question or miss it altogether. In 1992, the National Kidney Foundation in partnership with the United Network for Organ Sharing conducted an Organ Donation Survey which questioned why individuals did not designate a willingness to donate their organs.⁵ The most common reason respondents gave for not donating was the fact that they "had never been asked to."⁶ Applying the survey results, a law requiring that New York state citizens be asked to participate in the organ donation registry during motor vehicle or state ID registration should increase the number of participants in the New York State Donate Life Registry.

C. The Revised Legislation: "Lauren's Law"

The Proposed Act amends the Public Health Law, Election Law, and the Vehicle and Traffic Law to provide that a driver's license application, driver's license renewal form, non-driver identification card application or voter registration form would ask the applicant if they "would like to be added to the Donate Life Registry?" The applicant would then be able to choose "yes" or "not at this time." The "not at this time" response would enable applicants to take added time to consider the decision of organ donation.

The Proposed Act also provides that applicants who check "not at this time" or who fail to check a box in the Donate Life Registry section do not invalidate their voter registration forms and that if an applicant under the age of 18 checks "yes", it does not constitute consent to make an anatomical gift.

⁵ Dennis, J. M., Hanson, P., Hodge, E., Krum, R., and Veatch, R., "An Evaluation of the Ethics of Presumed Consent and a Proposal Based on Required Response," A Report of the Presumed Consent Subcommittee OPTN/UNOS Ethics Committee, (1993), Health Resources and Services Administration; US Dept of Health & Human Services. Online publication available at: <http://optn.transplant.hrsa.gov/resources/bioethics.asp?index=2#17>. (Last visited May 25, 2012.)

⁶ *Id.*

D. Opportunities to Strengthen the Proposed Act

The Health Law Committee believes that the Proposed Act would be even stronger if a provision were added to direct applicants to contact the Donate Life Registry if they change their minds at any time about organ donation. For the applicants who check “not at this time”, this addition would be especially important because it would give them necessary information to register as an organ donor at a later date.

The Health Law Committee also believes that the Proposed Act would be stronger if the language repeated throughout the bill, which states, “Failure to check a box shall not impair the validity of an application” was deleted with respect to driver license applications and renewals and non-driver identification card applications.⁷ The language in the original Lauren’s Law bills did not contain such language and therefore required applicants to actively choose whether or not they wished to enroll in the state organ donation registry.⁸ By requiring that applicants make a choice as to whether they wish to donate organs, it may result in more “yes” choices, and thus increase the rate of organ donation. This type of “mandated choice” legislation has been in place in Illinois since 2006.⁹ According to Donate Life America, Illinois currently has a donor designation rate (the rate at which individuals join the state registry as a percentage of all driver’s licenses and ID cards issued within a specific period of time) of almost 30% compared with New York’s donor designation rate of 12.2%.¹⁰ In 2010, the total number of organ donors in Illinois as a percentage of their state population was almost 60% compared with 15% of organ donors in New York.¹¹ As demonstrated by the increased organ donor enrollment in Illinois, a modification to the Proposed Act to require an applicant to answer the question of organ donation on a driver’s license application, renewals and ID card renewals would likely capture more donors willing to participate who otherwise might not have taken the active step to register.

E. Conclusion

The current public health law with respect to consent to organ donation is ineffective in enlisting the number of donors needed within New York State. Lauren’s Law will help to make it more effective. Although the Committee supports the passage of the Proposed Act, we urge the Legislature to consider including the above recommendations.

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⁷ We would leave the “failure to check” language as applying to voter registration because of the fundamental difference in character between exercising the right to vote and seeking the privilege of driving, and the differences in administration of voter registration and the driver and non-driver ID programs.

⁸ See A.6148-C/S.3885-A, 235th Session (N.Y. 2011)

⁹ Thaler, R., “Opting In vs. Opting Out,” The New York Times, Sept. 26, 2009. Online article available at: <http://www.nytimes.com/2009/09/27/business/economy/27view.html>. (Last visited May 24, 2012).

¹⁰ “National Donor Designation Report Card,” Donate Life America, April 2011, p. 6.

¹¹ *Id.* at 4-5.