

**STORAGE NAME:** h1883s1.hhs

**DATE:** February 27, 1998

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
HEALTH AND HUMAN SERVICES APPROPRIATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 1883

**RELATING TO:** Organ and Tissue Donation

**SPONSOR(S):** Committee on Health & Human Services Appropriations, Committee on Health Care Services and Rep. Albright

**STATUTE(S) AFFECTED:** s. 732.911, and Chapters 912, 913, 914, 916, and 922, Florida Statutes

**COMPANION BILL(S):**

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) HEALTH CARE SERVICES YEAS 9 NAYS 0
- (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 9 NAYS 0
- (3)
- (4)
- (5)

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**I. SUMMARY:**

This bill revises part X of chapter 732, Florida Statutes, relating to anatomical gifts, to do the following:

- ◆ Add definitions for the terms “cardiac death” and “brain death” for determining if a decedent meets criteria for organ and tissue donation.
- ◆ Clarify the priority of family members and relatives who make an anatomical gift if the decedent failed to donate his/her organs.
- ◆ Establish additional ways by which an anatomical gift may be revoked.
- ◆ Revise language which provides immunity from civil and criminal liability for hospitals, hospital administrators, and their designees relating to participation in the organ donation program, and add organ procurement organizations, eye banks and tissue banks to the list of parties given immunity.
- ◆ Authorize the Agency for Health Care Administration to use funds in an existing trust fund to establish and maintain an organ and tissue donor registry and an organ donor education. The bill also reduces the rate of assessment on organ procurement organizations, tissue and eye banks from .5% to .25% of total revenues, effective July 1, 1999.

In addition the bill establishes the “Florida Organs for Florida Citizens Law” to establish standards for organ donation, procurement, allocation, and transplantation in Florida.

This legislation will reduce collections by the Agency for Health Care Administration for the organ procurement program by \$84,317 for FY 1999-2000.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

In 1969, in an effort to promote organ and tissue donation, the Legislature passed the Florida Uniform Anatomical Gift Act. Modeled after the national Uniform Anatomical Gift Act, Florida's law establishes the process in which individuals or their families may donate organs and tissue.

Section 732.913, F.S., provides that any person who can make a will may donate all or part of his or her body for the purposes of transplantation, therapy, medical research, or education. Alternately, any member of specified classes of relatives and other persons may make a gift of part or all of a decedent's body, in absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class. These classes include, in order of priority, the spouse of the decedent, an adult son or daughter of the decedent, either parent of the decedent, and adult brother or sister of the decedent, a grandparent of the decedent, a guardian of the person at the time of his death, or a representative ad litem appointed by a court of competent jurisdiction upon petition heard ex parte filed by any person.

Section 732.914, F.S., provides that an anatomical gift may be made by a will or by another document which is signed by the donor in the presence of two witnesses, who must sign the document in his or her presence. An anatomical gift may be made either to a specified donee or without specifying a donee. In the later case, a gift may be accepted by the donor's attending physician.

Revocation of an anatomical gift is addressed in s. 732.916, F.S. It provides that an individual may revoke a donor authorization by a signed statement, an oral statement made in the presence of two persons, or by making a statement during a terminal illness or injury addressed to an attending physician.

Other features of the current law include a program administered by the Department of Highway Safety and Motor Vehicles (DHSMV) in which driver's license applicants express their consent to be an organ donor by completing a document and having their intent noted on the front of their driver's license. Section 732.915, F.S., requires these registration cards to be placed in a central registry developed by the agency and DHSMV.

To date, the donor registry has not been developed. Current practice is for the DHSMV to mail the donor documents to the Agency for Health Care Administration (agency) where they are stored in a central location. However, there is currently no mechanism in place to get copies of the donor document to the appropriate hospital in the event a donor dies. Since voluntary contributions to the program have been less than expected, funding has been inadequate to develop education initiatives or to establish the registry. The agency is requesting that other funds in the trust fund be made available on a one-time basis for these purposes. If this fund authorization is granted, the agency proposes to make the organ donor registry available to hospitals across the state via the Internet. Security codes will be used to prevent the disclosure of private medical records to the public.

Funding for the Organ and Tissue Donation program comes from two sources. Applicants or renewals for driver licenses or vehicle registration are asked if they would like to make a \$1 voluntary contribution. Organ and Tissue procurement organizations are assessed .5 percent of their gross revenues, up to a maximum of \$35,000 annually. As of January 1997, \$125,341 has been generated from voluntary contributions, and over \$300,000 has been generated from assessments. The donor registry is estimated to cost \$200,000.

Organ transplantation. Currently, if an organ donor is near death and the organs are suitable for donation, the hospital notifies the organ procurement organization and the organs are harvested. Solid organs deemed suitable for transplantation are offered first to patients on the status one waiting list, which means a critical patient who will die without an organ transplant. Next, organs go to the local transplant list, followed by the statewide list, the regional list, and then the national list. There are exceptions made to this procedure for patients who closely match the antigen type of the organ or for patients of exceptional need.

**B. EFFECT OF PROPOSED CHANGES:**

Hospitals will have access to a copy of the originally signed organ donor document via the Internet. An educational program will be developed to encourage all Floridians, including minority populations, to sign an organ donation document. Increased availability of donor organs will result in fewer deaths, better quality of life, and more productive citizens among persons needing an organ transplant.

The current procedure for organ procurement and transplantation used in Florida will be codified into the Florida statutes. Thus, in order to change this current policy, an amendment to state law will be required.

Assessments against organ procurement organizations, tissue banks, and eye banks will be reduced from .5% to .25% of revenues effective July 1, 1999.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

The bill reduces an assessment against organ procurement organizations, tissue banks, and eye banks effective July 1, 1999.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

The bill does clarify the role of family members in making organ donations.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION RESEARCH:**

**Section 1.** Amends s. 320.08047, F.S., relating to voluntary contributions for organ and tissue donor education, to authorize the agency to use these funds for maintaining the organ donor registry.

**Section 2.** Amends s. 322.08, F.S., relating to application for a driver's license, to authorize the agency to use voluntary contributions for maintaining the organ donor registry.

**Section 3.** Creates s. 381.60225, F.S., relating to priority use of organs donated in Florida. This section, titled "the Florida Organs for Florida Citizens Law", establishes standards for organ donation, procurement, allocation, and transplantation in Florida.

**Section 4.** Amends s. 381.6024, F.S., relating to fees for the Florida Organ and Tissue Donor Education and Procurement Trust Fund, to authorize the agency to use these funds for maintenance of the organ and tissue donor registry and the donor education program.

**Section 5.** Amends s. 381.6024, F.S., relating to fees for the Florida Organ and Tissue Donor Education and Procurement Trust Fund, to reduce the assessment on organ procurement organizations, eye banks, and tissue banks from .5% to .25% of revenues effective July 1, 1999.

**Section 6.** Amends s. 732.911, F.S., relating to definitions, to expand upon the definition of "death" .

**Section 7.** Amends s. 732.912, F.S., relating to persons who may make an anatomical gift, to clarify that a donor must be an adult. In addition, this section clarifies that the objection of an adult son or daughter is only relevant when the spouse is making the gift.

**Section 8.** Amends s. 732.913, F.S., relating to persons who may become donees, to clarify that persons or entities may become the receiver of an anatomical gift.

**Section 9.** Amends s. 732.914(5), F.S., relating to the manner of executing an anatomical gift, to make a technical, clarifying change.

**Section 10.** Amends s. 732.915(4), F.S., relating to delivery of the document, to delete language authorizing the agency to levy an annual assessment against each organ procurement organization, eye bank, and tissue bank.

**Section 11.** Amends s. 732.916, F.S., relating to amendment or revocation of an anatomical gift, to specify that when a physician is told by a patient that the patient wishes to revoke an anatomical gift, the physician must notify the procurement agency of the revocation; and to delete language authorizing a donor to revoke an anatomical gift by destruction of the document.

**Section 12.** Amends s. 732.9216, F.S., relating to the Organ and Tissue Donor Education Panel, to correct a cross reference.

**Section 13.** Amends s. 732.922, F.S., relating to the duty of hospital administrators, to clarify circumstances when the hospital administrator must request a family to make a gift, and to clarify language which provides civil or criminal liability protection for hospitals and hospital administrators. The section also extends civil and criminal liability to organ procurement organizations, eye banks, and tissue banks certified in Florida. A new subsection is added requiring a hospital administrator or a designee to directly notify the organ procurement organization of all potential organ donors at or near the time of death.

**Section 14.** Provides a severability clause.

**Section 15.** Provides an effective date of October 1, of the year in which it is enacted.

### III. FISCAL & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

##### 1. Non-recurring Effects:

None.

2. Recurring Effects:

The decrease in rate assessment on organ procurement from .5 to .25% will reduce revenues.

**REVENUES**

**1999-00**

Fee decrease

(\$ 84,317)

Voluntary donations - driver license applicants

50,000

The increase in voluntary donations from driver license applicants is expected as a result of increased advertising and organ donor education provisions in the bill.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

There may be an increase in human organs available for transplant.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None of the provisions in this bill will require counties or municipalities to expend funds over the next 5 to 10 years.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce counties' and municipalities' authority to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill will not reduce the percentage of any taxes shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A strike everything amendment was approved by the Committee on Health and Human Services Appropriations on February 5, 1998. The amendment contained only minor technical revisions and date change related to the fact that the bill was carried over from the 1997 session. The bill was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE SERVICES:

Prepared by:

Legislative Research Director:

Michael P. Hansen

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AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES  
APPROPRIATIONS:

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