

By the Committee on Health Care Services and
Representative Albright

1 A bill to be entitled
2 An act relating to organ and tissue donation;
3 amending ss. 320.08047, 322.08, and 381.6024,
4 F.S.; authorizing the use of certain funds for
5 maintaining the organ and tissue donor
6 registry; revising annual assessments on
7 certain organ procurement organizations, tissue
8 banks, and eye banks; creating s. 381.60225,
9 F.S.; establishing standards for organ
10 donation, procurement, allocation, and
11 transplantation; amending s. 732.911, F.S.;
12 providing definitions; amending ss. 732.912 and
13 732.914, F.S.; clarifying who may make an
14 anatomical gift in the absence of a declaration
15 by a decedent; amending s. 732.913, F.S.;
16 specifying that entities as well as persons may
17 become donees of anatomical gifts; amending s.
18 732.915, F.S.; repealing an annual assessment
19 on organ procurement organizations, tissue
20 banks, and eye banks; amending s. 732.916,
21 F.S.; revising procedures for amending or
22 revoking an anatomical gift; amending s.
23 732.9216, F.S.; adding a cross reference;
24 amending s. 732.922, F.S.; providing a
25 limitation in civil or criminal liability for
26 organ procurement organizations, eye banks,
27 tissue banks, hospitals, and hospital
28 administrators or their designees; providing
29 additional duties for the hospital
30 administrator or his designee; providing
31 severability; providing effective dates.

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Section 320.08047, Florida Statutes, 1996
4 Supplement, is amended to read:

5 320.08047 Voluntary contribution for organ and tissue
6 donor education.--As a part of the collection process for
7 license taxes as specified in s. 320.08, individuals shall be
8 permitted to make a voluntary contribution of \$1, which
9 contribution shall be deposited into the Florida Organ and
10 Tissue Donor Education and Procurement Trust Fund for organ
11 and tissue donor education and for maintaining the organ and
12 tissue donor registry.

13 Section 2. Paragraph (b) of subsection (7) of section
14 322.08, Florida Statutes, 1996 Supplement, is amended to read:

15 322.08 Application for license.--

16 (7) The application form for a driver's license or
17 duplicate thereof shall include language permitting the
18 following:

19 (b) A voluntary contribution of \$1 per applicant,
20 which contribution shall be deposited into the Florida Organ
21 and Tissue Donor Education and Procurement Trust Fund for
22 organ and tissue donor education and for maintaining the organ
23 and tissue donor registry.

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25 A statement providing an explanation of the purpose of the
26 trust funds shall also be included.

27 Section 3. Section 381.60225, Florida Statutes, is
28 created to read:

29 381.60225 Priority use of organs donated in Florida.--

30 (1) This section may be cited as the "Florida Organs
31 for Florida Citizens Law."

1 (2) The Legislature establishes the following
2 standards for organ donation, procurement, allocation, and
3 transplantation in Florida.

4 (a) All patients within Florida who have been
5 evaluated and listed for solid organ transplantation by a
6 state-approved transplant facility shall be placed on a
7 Florida waiting list and shall be allocated organs according
8 to paragraph (c).

9 (b) Potential organ donors shall be referred to a
10 Florida-certified organ procurement organization.

11 (c) Solid organs obtained by a Florida-certified organ
12 procurement organization which are deemed suitable for
13 transplantation shall be offered in the following priority to:

14 1. Patients named on the Florida Statewide Solid Organ
15 Transplant list who meet the requirements for Organ
16 Procurement Transplant Network status one.

17 2. Patients named on the Florida local Health Care
18 Financing Administration certified organ procurement
19 organization service area transplant list.

20 3. Other patients named on the Florida Statewide Solid
21 Organ Transplant list.

22 4. Patients named on the Regional Solid Organ
23 Transplant list.

24 5. Patients named on the National Solid Organ
25 Transplant list.

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27 For the purpose of this subsection, the term "transplant list"
28 includes certain categories of national or regional organ
29 sharing for patients of exceptional need or exceptional match,
30 as approved or mandated by the United Network for Organ
31 Sharing.

1 Section 4. Subsection (2) and paragraph (b) of
2 subsection (4) of section 381.6024, Florida Statutes, 1996
3 Supplement, are amended to read:

4 381.6024 Fees; Florida Organ and Tissue Donor
5 Education and Procurement Trust Fund.--

6 (2) The Agency for Health Care Administration shall
7 assess annual fees to be used, in the following order of
8 priority, for the certification program, and the advisory
9 board, maintenance of the organ and tissue donor registry, and
10 the organ and tissue donor education program in the following
11 amounts, which may not exceed \$35,000 per organization:

12 (a) Each general organ procurement organization shall
13 pay the greater of \$1,000 or 0.5 percent of its total revenues
14 produced from procurement activity in this state by the
15 certificateholder during its most recently completed fiscal
16 year or operational year.

17 (b) Each bone and tissue procurement agency or bone
18 and tissue bank shall pay the greater of \$1,000 or 0.5 percent
19 of its total revenues from procurement and processing activity
20 in this state by the certificateholder during its most
21 recently completed fiscal year or operational year.

22 (c) Each eye bank shall pay the greater of \$500 or 0.5
23 percent of its total revenues produced from procurement
24 activity in this state by the certificateholder during its
25 most recently completed fiscal year or operational year.

26 (4)

27 (b) Moneys deposited in the trust fund pursuant to
28 this section must be used exclusively for the implementation,
29 administration, and operation of the certification program and
30 the advisory board, for maintaining the organ and tissue donor
31 registry, and for organ and tissue donor education.

1 Section 5. Effective July 1, 1998, subsection (2) of
2 section 381.6024, Florida Statutes, as amended by this act, is
3 amended to read:

4 381.6024 Fees; Florida Organ and Tissue Donor
5 Education and Procurement Trust Fund.--

6 (2) The Agency for Health Care Administration shall
7 assess annual fees to be used, in the following order of
8 priority, for the certification program, the advisory board,
9 maintenance of the organ and tissue donor registry, and the
10 organ and tissue donor education program in the following
11 amounts, which may not exceed \$35,000 per organization:

12 (a) Each general organ procurement organization shall
13 pay the greater of \$1,000 or 0.25 ~~0.5~~ percent of its total
14 revenues produced from procurement activity in this state by
15 the certificateholder during its most recently completed
16 fiscal year or operational year.

17 (b) Each bone and tissue procurement agency or bone
18 and tissue bank shall pay the greater of \$1,000 or 0.25 ~~0.5~~
19 percent of its total revenues from procurement and processing
20 activity in this state by the certificateholder during its
21 most recently completed fiscal year or operational year.

22 (c) Each eye bank shall pay the greater of \$500 or
23 0.25 ~~0.5~~ percent of its total revenues produced from
24 procurement activity in this state by the certificateholder
25 during its most recently completed fiscal year or operational
26 year.

27 Section 6. Section 732.911, Florida Statutes, is
28 amended to read:

29 732.911 Definitions.--For the purpose of this part:
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1 (1) "Bank" or "storage facility" means a facility
2 licensed, accredited, or approved under the laws of any state
3 for storage of human bodies or parts thereof.

4 (2) "Death" means the irreversible cessation of the
5 function of the entire brain, including the brain stem, as
6 determined in accordance with s. 382.009, or the cessation of
7 life which is manifested by the irreversible loss and absence
8 of heartbeat and breathing as determined in accordance with
9 currently accepted medical standards.

10 ~~(3)(2)~~ "Donor" means an individual who makes a gift of
11 all or part of his body.

12 ~~(4)(3)~~ "Hospital" means a hospital licensed,
13 accredited, or approved under the laws of any state and
14 includes a hospital operated by the United States Government
15 or a state, or a subdivision thereof, although not required to
16 be licensed under state laws.

17 ~~(5)(4)~~ "Physician" or "surgeon" means a physician or
18 surgeon licensed to practice under chapter 458 or chapter 459
19 or similar laws of any state. "Surgeon" includes dental or
20 oral surgeon.

21 Section 7. Section 732.912, Florida Statutes, is
22 amended to read:

23 732.912 Persons who may make an anatomical gift.--

24 (1) Any person who may make a will may give all or
25 part of his body for any purpose specified in s. 732.910, the
26 gift to take effect upon death. An anatomical gift made by an
27 adult donor and not revoked by the donor as provided in s.
28 732.916 is irrevocable and does not require the consent or
29 concurrence of any person after the donor's death.

30 (2) If the decedent has not executed an anatomical
31 gift, then a member of one of the classes of persons listed

1 below, in the order of priority stated and in the absence of
2 actual notice of contrary indications by the decedent or
3 actual notice of opposition by a member of the same or a prior
4 class, ~~any of the following persons~~ may give all or any part
5 of the decedent's body for any purpose specified in s.
6 732.910:

- 7 (a) The spouse of the decedent;
8 (b) An adult son or daughter of the decedent;
9 (c) Either parent of the decedent;
10 (d) An adult brother or sister of the decedent;
11 (e) A grandparent of the decedent;
12 (f) A guardian of the person of the decedent at the
13 time of his death; or

14 (g) A representative ad litem who shall be appointed
15 by a court of competent jurisdiction forthwith upon a petition
16 heard ex parte filed by any person, which representative ad
17 litem shall ascertain that no person of higher priority exists
18 who objects to the gift of all or any part of the decedent's
19 body and that no evidence exists of the decedent's having made
20 a communication expressing a desire that his body or body
21 parts not be donated upon death;

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23 but no gift shall be made by the spouse if any adult son or
24 daughter objects, and provided that those of higher priority,
25 if they are reasonably available, have been contacted and made
26 aware of the proposed gift, and further provided that a
27 reasonable search is made to show that there would have been
28 no objection on religious grounds by the decedent.

29 (3) If the donee has actual notice of contrary
30 indications by the decedent or, in the case of a spouse making
31 the gift, an objection of an adult son or daughter or actual

1 notice that a gift by a member of a class is opposed by a
2 member of the same or a prior class, the donee shall not
3 accept the gift.

4 (4) The person authorized by subsection (2) may make
5 the gift after the decedent's death or immediately before the
6 decedent's death.

7 (5) A gift of all or part of a body authorizes any
8 examination necessary to assure medical acceptability of the
9 gift for the purposes intended.

10 (6) Once the gift has been made, the rights of the
11 donee are paramount to the rights of the others ~~The rights of the~~
12 ~~donee created by the gift are paramount to the rights of~~
13 ~~others~~, except as provided by s. 732.917.

14 Section 8. Section 732.913, Florida Statutes, is
15 amended to read:

16 732.913 Persons who may become donees; purposes for
17 which anatomical gifts may be made.--The following persons or
18 entities may become donees of gifts of bodies or parts of them
19 for the purposes stated:

20 (1) Any hospital, surgeon, or physician for medical or
21 dental education or research, advancement of medical or dental
22 science, therapy, or transplantation.

23 (2) Any accredited medical or dental school, college,
24 or university for education, research, advancement of medical
25 or dental science, or therapy.

26 (3) Any bank or storage facility for medical or dental
27 education, research, advancement of medical or dental science,
28 therapy, or transplantation.

29 (4) Any individual specified by name for therapy or
30 transplantation needed by him.

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1 However, the Legislature declares that the public policy of
2 this state prohibits restrictions on the possible recipients
3 of an anatomical gift on the basis of race, color, religion,
4 sex, national origin, age, physical handicap, health status,
5 marital status, or economic status, and such restrictions are
6 hereby declared void and unenforceable.

7 Section 9. Subsection (5) of section 732.914, Florida
8 Statutes, is amended to read:

9 732.914 Manner of executing anatomical gifts.--

10 (5) Any gift by a member of a class ~~person~~ designated
11 in s. 732.912(2) shall be made by a document signed by that
12 person or made by that person's witnessed telephonic
13 discussion, telegraphic message, or other recorded message.

14 Section 10. Subsection (4) of section 732.915, Florida
15 Statutes, 1996 Supplement, is amended to read:

16 732.915 Delivery of document; organ and tissue donor
17 registry.--

18 (4) The Agency for Health Care Administration and the
19 Department of Highway Safety and Motor Vehicles shall develop
20 and implement an organ and tissue donor registry which shall
21 record, through electronic means, organ and tissue donation
22 documents submitted through the driver license identification
23 program or by other sources. The registry shall be maintained
24 in a manner which will allow, through electronic and
25 telephonic methods, immediate access to organ and tissue
26 donation documents 24 hours a day, 7 days a week. Hospitals,
27 organ and tissue procurement agencies, and other parties
28 identified by the agency by rule shall be allowed access
29 through coded means to the information stored in the registry.
30 Costs for the organ and tissue donor registry shall be paid
31 from the Florida Organ and Tissue Donor Education and

1 Procurement Trust Fund created by s. 732.92155. Funds
2 deposited into the Florida Organ and Tissue Donor Education
3 and Procurement Trust Fund ~~pursuant to this section~~ shall be
4 utilized by the Agency for Health Care Administration for
5 maintaining the organ and tissue donor registry and for organ
6 and tissue donor education. ~~The Agency for Health Care~~
7 ~~Administration shall levy an annual assessment against each~~
8 ~~registered organ procurement organization, tissue bank, and~~
9 ~~eye bank, based on the methodology set out in s. 381.6024 for~~
10 ~~the purpose of maintaining the organ and tissue donor~~
11 ~~registry. The combined total assessments levied upon all~~
12 ~~organ procurement organizations, tissue banks, and eye banks~~
13 ~~shall not exceed \$30,000 annually.~~

14 Section 11. Section 732.916, Florida Statutes, is
15 amended to read:

16 732.916 Amendment or revocation of the gift.--

17 (1) A ~~If the will or other document authorized under~~
18 ~~the provisions of s. 732.915(2) has been delivered to a~~
19 ~~specified donee, the donor may amend or revoke an anatomical~~
20 ~~the gift by:~~

21 (a) The execution and delivery to the donee of a
22 signed statement.

23 (b) An oral statement that is:

24 1. Made to the donor's spouse; or

25 2. Made in the presence of two persons and
26 communicated to the donor's family or attorney or to the
27 donee.

28 (c) A statement during a terminal illness or injury
29 addressed to an attending physician, who is then required to
30 communicate the revocation of the gift to the procurement
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1 organization which is certified by the state and ~~communicated~~
2 ~~to the donee.~~

3 (d) A signed document found on his person or in his
4 effects.

5 ~~(2) A document of gift that has not been delivered to~~
6 ~~the donee may be revoked by the donor in the manner set out in~~
7 ~~subsection (1) or by destruction, cancellation, or mutilation~~
8 ~~of the document.~~

9 (2)~~(3)~~ Any gift made by a will may also be amended or
10 revoked in the manner provided for amendment or revocation of
11 wills or as provided in subsection (1).

12 Section 12. Subsection (1) of section 732.9216,
13 Florida Statutes, is amended to read:

14 732.9216 Organ and tissue donor education panel.--

15 (1) The Legislature recognizes that there exists in
16 the state a shortage of organ and tissue donors to provide the
17 organs and tissue that could save lives or enhance the quality
18 of life for many Floridians. The Legislature further
19 recognizes the need to encourage the various minority
20 populations of Florida to donate organs and tissue. It is the
21 intent of the Legislature that the funds collected pursuant to
22 ss. 320.08047 and s. 322.08(7)(b) be used ~~exclusively~~ for
23 educational purposes aimed at increasing the number of organ
24 and tissue donors, thus affording more Floridians who are
25 awaiting organ or tissue transplants the opportunity for a
26 full and productive life.

27 Section 13. Subsections (2) and (5) of section
28 732.922, Florida Statutes, are amended, and subsection (6) is
29 added to said section, to read:

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1 732.922 Duty of certain hospital administrators;
2 liability of hospital administrators, organ procurement
3 organizations, eye banks, and tissue banks.--

4 (2) Where, based on accepted medical standards, a
5 hospital patient is a suitable candidate for organ or tissue
6 donation, the hospital administrator or a ~~his~~ designee shall,
7 at or near the time of death, access the organ and tissue
8 donor registry created by s. 732.915(4) to ascertain the
9 existence of a donor card or document executed by the
10 decedent. In the absence of a donor card, organ donation
11 sticker or organ donation imprint on a driver's license, or
12 other properly executed document, the hospital administrator
13 or designee shall request any of the persons specified in s.
14 732.912, in the order and manner of priority stated in s.
15 732.912, to consent to the gift of all or any part of the
16 decedent's body for any purpose specified in this part.
17 Except as provided in s. 732.912, in the absence of actual
18 notice of opposition, consent ~~or refusal~~ need only be obtained
19 from the person or persons in the highest priority class
20 reasonably available.

21 (5) There shall be no civil or criminal liability
22 against any organ procurement organization, eye bank, or
23 tissue bank certified pursuant to s. 381.6022, or against any
24 hospital or the hospital administrator or designee, when
25 complying with the provisions of this part and the rules of
26 the Agency for Health Care Administration or when, in the
27 exercise of reasonable care, a request for organ donation is
28 deemed to be inappropriate and the gift is not made according
29 to this part and the rules of the Agency for Health Care
30 Administration.~~No recovery shall be allowed nor shall civil~~
31 ~~or criminal proceedings be instituted in any court in this~~

1 ~~state against the licensed hospital or the hospital~~
2 ~~administrator or his designee when, in his best judgment, he~~
3 ~~deems such a request for organ donation to be inappropriate~~
4 ~~according to the procedures established by the Agency for~~
5 ~~Health Care Administration, or he has made every reasonable~~
6 ~~effort to comply with the provisions of this section.~~

7 (6) The hospital administrator or a designee shall, at
8 or near the time of death, directly notify their affiliated
9 Health Care Financing Administration designated organ
10 procurement organization of all potential organ donors. This
11 notification shall not be made to a tissue bank or eye bank in
12 lieu of the organ procurement organization, unless the tissue
13 bank or eye bank is also a Health Care Financing
14 Administration designated organ procurement organization.

15 Section 14. In any provision of this act or the
16 application thereof to any person or circumstances is held
17 invalid, the invalidity shall not affect other provisions or
18 applications of the act which can be given effect without the
19 invalid provision or application, and to this end the
20 provisions of this act are declared severable.

21 Section 15. This act shall take effect October 1,
22 1997.

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HOUSE SUMMARY

Revises funding provisions related to organ and tissue donor and procurement programs, to provide funding for maintenance of the organ and tissue donor registry and for organ and tissue donor education. Effective July 1, 1998, revises methodology for calculating an annual Agency for Health Care Administration assessment against organ procurement organizations, tissue banks, and eye banks. Creates the "Florida Organs for Florida Citizens Law," establishing standards for organ donation, procurement, allocation, and transplantation in the state.

Defines "death" for purposes of provisions relating to anatomical gifts. Revises and clarifies such provisions, as to who may make and receive such gifts, procedures for amending or revoking such gifts, and the rights of donees. Limits certain civil or criminal liability for organ procurement organizations, eye banks, tissue banks, hospitals, and hospital administrators or their designees, with respect to organ donations. Requires the hospital administrator or designee to provide certain notification to the designated organ procurement organization regarding a potential organ donor, at or near the time of death.