

By Senator Childers

1-87A-98

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

1 Section 1. Section 320.08047, Florida Statutes, is  
2 amended to read:

3 320.08047 Voluntary contribution for organ and tissue  
4 donor education.--As a part of the collection process for  
5 license taxes as specified in s. 320.08, individuals shall be  
6 permitted to make a voluntary contribution of \$1, which  
7 contribution shall be deposited into the Florida Organ and  
8 Tissue Donor Education and Procurement Trust Fund for organ  
9 and tissue donor education and for maintaining the organ and  
10 tissue donor registry.

11 Section 2. Paragraph (b) of subsection (7) of section  
12 322.08, Florida Statutes, is amended to read:

13 322.08 Application for license.--

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

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

22  
23 A statement providing an explanation of the purpose of the  
24 trust funds shall also be included.

25 Section 3. Subsection (2) and paragraph (b) of  
26 subsection (4) of section 381.6024, Florida Statutes, are  
27 amended to read:

28 381.6024 Fees; Florida Organ and Tissue Donor  
29 Education and Procurement Trust Fund.--

30 (2) The Agency for Health Care Administration shall  
31 assess annual fees to be used, in the following order of

1 priority,for the certification program,~~and~~ the advisory  
2 board, maintenance of the organ and tissue donor registry, and  
3 the organ and tissue donor education program in the following  
4 amounts, which may not exceed \$35,000 per organization:

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

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

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

19 (4)

20 (b) Moneys deposited in the trust fund pursuant to  
21 this section must be used exclusively for the implementation,  
22 administration, and operation of the certification program and  
23 the advisory board, for maintaining the organ and tissue donor  
24 registry, and for organ and tissue donor education.

25 Section 4. Effective July 1, 1999, subsection (2) of  
26 section 381.6024, Florida Statutes, as amended by this act, is  
27 amended to read:

28 381.6024 Fees; Florida Organ and Tissue Donor  
29 Education and Procurement Trust Fund.--

30 (2) The Agency for Health Care Administration shall  
31 assess annual fees to be used, in the following order of

1 priority, for the certification program, the advisory board,  
2 maintenance of the organ and tissue donor registry, and the  
3 organ and tissue donor education program in the following  
4 amounts, which may not exceed \$35,000 per organization:

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

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

15 (c) Each eye bank shall pay the greater of \$500 or  
16 0.25 ~~0.5~~ percent of its total revenues produced from  
17 procurement activity in this state by the certificateholder  
18 during its most recently completed fiscal year or operational  
19 year.

20 Section 5. Section 732.911, Florida Statutes, is  
21 amended to read:

22 732.911 Definitions.--As used in ~~For the purpose of~~  
23 this part, the term:

24 (1) "Bank" or "storage facility" means a facility  
25 licensed, accredited, or approved under the laws of any state  
26 for storage of human bodies or parts thereof.

27 (2) "Death" means the absence of life as determined,  
28 in accordance with currently accepted medical standards, by  
29 the irreversible cessation of all respiration and circulatory  
30 function, or as determined, in accordance with s. 382.009, by  
31

1 the irreversible cessation of the functions of the entire  
2 brain, including the brain stem.

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

5 (4)~~(3)~~ "Hospital" means a hospital licensed,  
6 accredited, or approved under the laws of any state and  
7 includes a hospital operated by the United States Government  
8 or a state, or a subdivision thereof, although not required to  
9 be licensed under state laws.

10 (5)~~(4)~~ "Physician" or "surgeon" means a physician or  
11 surgeon licensed to practice under chapter 458 or chapter 459  
12 or similar laws of any state. "Surgeon" includes dental or  
13 oral surgeon.

14 Section 6. Section 732.912, Florida Statutes, is  
15 amended to read:

16 732.912 Persons who may make an anatomical gift.--

17 (1) Any person who may make a will may give all or  
18 part of his or her body for any purpose specified in s.  
19 732.910, the gift to take effect upon death. An anatomical  
20 gift made by an adult donor and not revoked by the donor as  
21 provided in s. 732.916 is irrevocable and does not require the  
22 consent or concurrence of any person after the donor's death.

23 (2) If the decedent has not executed an agreement  
24 concerning an anatomical gift, a member of one of the classes  
25 of persons listed below, in the order of priority stated and  
26 in the absence of actual notice of contrary indications by the  
27 decedent or actual notice of opposition by a member of the  
28 same or a prior class, ~~any of the following persons~~ may give  
29 all or any part of the decedent's body for any purpose  
30 specified in s. 732.910:

31 (a) The spouse of the decedent;

1           (b) An adult son or daughter of the decedent;  
2           (c) Either parent of the decedent;  
3           (d) An adult brother or sister of the decedent;  
4           (e) A grandparent of the decedent;  
5           (f) A guardian of the person of the decedent at the  
6 time of his or her death; or  
7           (g) A representative ad litem who shall be appointed  
8 by a court of competent jurisdiction forthwith upon a petition  
9 heard ex parte filed by any person, which representative ad  
10 litem shall ascertain that no person of higher priority exists  
11 who objects to the gift of all or any part of the decedent's  
12 body and that no evidence exists of the decedent's having made  
13 a communication expressing a desire that his or her body or  
14 body parts not be donated upon death;  
15  
16 but no gift shall be made by the spouse if any adult son or  
17 daughter objects, and provided that those of higher priority,  
18 if they are reasonably available, have been contacted and made  
19 aware of the proposed gift, and further provided that a  
20 reasonable search is made to show that there would have been  
21 no objection on religious grounds by the decedent.  
22           (3) If the donee has actual notice of contrary  
23 indications by the decedent or, in the case of a spouse making  
24 the gift, an objection of an adult son or daughter or actual  
25 notice that a gift by a member of a class is opposed by a  
26 member of the same or a prior class, the donee shall not  
27 accept the gift.  
28           (4) The person authorized by subsection (2) may make  
29 the gift after the decedent's death or immediately before the  
30 decedent's death.  
31

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

4 (6) Once the gift has been made, the rights of the  
5 donee ~~created by the gift~~ are paramount to the rights of  
6 others, except as provided by s. 732.917.

7 Section 7. Section 732.913, Florida Statutes, is  
8 amended to read:

9 732.913 Persons and entities that ~~who~~ may become  
10 donees; purposes for which anatomical gifts may be made.--The  
11 following persons or entities may become donees of gifts of  
12 bodies or parts of them for the purposes stated:

13 (1) Any hospital, surgeon, or physician for medical or  
14 dental education or research, advancement of medical or dental  
15 science, therapy, or transplantation.

16 (2) Any accredited medical or dental school, college,  
17 or university for education, research, advancement of medical  
18 or dental science, or therapy.

19 (3) Any bank or storage facility for medical or dental  
20 education, research, advancement of medical or dental science,  
21 therapy, or transplantation.

22 (4) Any individual specified by name for therapy or  
23 transplantation needed by him or her.

24

25 However, the Legislature declares that the public policy of  
26 this state prohibits restrictions on the possible recipients  
27 of an anatomical gift on the basis of race, color, religion,  
28 sex, national origin, age, physical handicap, health status,  
29 marital status, or economic status, and such restrictions are  
30 hereby declared void and unenforceable.

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

3           732.914 Manner of executing anatomical gifts.--

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

8           Section 9. Subsection (4) of section 732.915, Florida  
9 Statutes, is amended to read:

10          732.915 Delivery of document; organ and tissue donor  
11 registry.--

12          (4) The Agency for Health Care Administration and the  
13 Department of Highway Safety and Motor Vehicles shall develop  
14 and implement an organ and tissue donor registry which shall  
15 record, through electronic means, organ and tissue donation  
16 documents submitted through the driver license identification  
17 program or by other sources. The registry shall be maintained  
18 in a manner which will allow, through electronic and  
19 telephonic methods, immediate access to organ and tissue  
20 donation documents 24 hours a day, 7 days a week. Hospitals,  
21 organ and tissue procurement agencies, and other parties  
22 identified by the agency by rule shall be allowed access  
23 through coded means to the information stored in the registry.  
24 Costs for the organ and tissue donor registry shall be paid  
25 from the Florida Organ and Tissue Donor Education and  
26 Procurement Trust Fund created by s. 732.92155. Funds  
27 deposited into the Florida Organ and Tissue Donor Education  
28 and Procurement Trust Fund ~~pursuant to this section~~ shall be  
29 utilized by the Agency for Health Care Administration for  
30 maintaining the organ and tissue donor registry and for organ  
31 and tissue donor education. ~~The Agency for Health Care~~



1 ~~Administration shall levy an annual assessment against each~~  
2 ~~registered organ procurement organization, tissue bank, and~~  
3 ~~eye bank, based on the methodology set out in s. 381.6024 for~~  
4 ~~the purpose of maintaining the organ and tissue donor~~  
5 ~~registry. The combined total assessments levied upon all~~  
6 ~~organ procurement organizations, tissue banks, and eye banks~~  
7 ~~shall not exceed \$30,000 annually.~~

8 Section 10. Section 732.916, Florida Statutes, is  
9 amended to read:

10 732.916 Amendment or revocation of the gift.--

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

15 (a) The execution and delivery to the donee of a  
16 signed statement.

17 (b) An oral statement that is:

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

19 2. Made in the presence of two persons and

20 communicated to the donor's family or attorney or to the  
21 donee.

22 (c) A statement during a terminal illness or injury  
23 addressed to an attending physician, who must communicate the  
24 revocation of the gift to the procurement organization that is  
25 certified by the state and communicated to the donee.

26 (d) A signed document found on the donor's person or  
27 in the donor's effects.

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

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

4           Section 11. Subsection (1) of section 732.9216,  
5 Florida Statutes, is amended to read:

6           732.9216 Organ and tissue donor education panel.--

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

19           Section 12. Section 732.922, Florida Statutes, is  
20 amended to read:

21           732.922 Duty of certain hospital administrators;  
22 liability of hospital administrators, organ procurement  
23 organizations, eye banks, and tissue banks.--

24           (1) When used in this section, "hospital" means any  
25 establishment licensed under chapter 395 except psychiatric  
26 and rehabilitation hospitals.

27           (2) Where, based on accepted medical standards, a  
28 hospital patient is a suitable candidate for organ or tissue  
29 donation, the hospital administrator or the hospital  
30 administrator's designee shall, at or near the time of death,  
31 access the organ and tissue donor registry created by s.

1 732.915(4) to ascertain the existence of a donor card or  
2 document executed by the decedent. In the absence of a donor  
3 card, organ donation sticker or organ donation imprint on a  
4 driver's license, or other properly executed ~~or~~ document, the  
5 hospital administrator or designee shall request any of the  
6 persons specified in s. 732.912, in the order and manner of  
7 priority stated in s. 732.912, to consent to the gift of all  
8 or any part of the decedent's body for any purpose specified  
9 in this part. Except as provided in s. 732.912, in the  
10 absence of actual notice of opposition, consent ~~or refusal~~  
11 need only be obtained from the person or persons in the  
12 highest priority class reasonably available.

13 (3) A gift made pursuant to a request required by this  
14 section shall be executed pursuant to s. 732.914.

15 (4) The Agency for Health Care Administration shall  
16 establish rules and guidelines concerning the education of  
17 individuals who may be designated to perform the request and  
18 the procedures to be used in making the request. The agency  
19 is authorized to adopt rules concerning the documentation of  
20 the request, where such request is made.

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

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

8       (6) The hospital administrator or a designee shall, at  
9 or near the time of death of a potential organ donor, directly  
10 notify the affiliated Health Care Financing Administration  
11 designated organ procurement organization of the potential  
12 organ donor. This organ procurement organization must offer  
13 any organ from such a donor first to patients on a  
14 Florida-based local or state organ sharing transplant list.  
15 For the purpose of this subsection, the term "transplant list"  
16 includes certain categories of national or regional organ  
17 sharing for patients of exceptional need or exceptional match,  
18 as approved or mandated by the United Network for Organ  
19 Sharing. This notification must not be made to a tissue bank  
20 or eye bank in lieu of the organ procurement organization  
21 unless the tissue bank or eye bank is also a  
22 Health-Care-Financing-Administration-designated organ  
23 procurement organization.

24       Section 13. If any provision of this act or the  
25 application thereof to any person or circumstance is held  
26 invalid, the invalidity shall not affect other provisions or  
27 applications of the act which can be given effect without the  
28 invalid provision or application, and to this end the  
29 provisions of this act are declared severable.

30       Section 14. Except as otherwise provided in this act,  
31 this act shall take effect upon becoming a law.

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SENATE SUMMARY

Revises provisions relating to organ and tissue donation. Defines the term "death." Specifies who may make an anatomical gift in the absence of a declaration by a decedent. Provides that entities as well as individuals may donate anatomical gifts. Clarifies who must comply with certain procedures. Amends procedures for revoking an anatomical gift. Specifies the duties of organ procurement organizations, eye banks, and tissue banks. Defines the term "organ procurement organization." Modifies the duties of a hospital administrator or the administrator's designee and organ procurement organizations with regard to organ procurement activities. Limits the civil or criminal liability of organ procurement organizations, eye banks, tissue banks, hospitals, and hospital administrators or their designees. Authorizes the use of certain trust fund revenue for establishing an organ donor registry and for donor education, and amends trust fund sources to reflect this authority. Reduces procurement agency assessments.