

1
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.

31

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.