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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH PROMOTION
ANALYSIS**

BILL #: HB 239
RELATING TO: Anatomical Gifts
SPONSOR(S): Representative(s) Hogan, Harrell, & others
TIED BILL(S):

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

- (1) HEALTH PROMOTION
 - (2) JUDICIAL OVERSIGHT
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
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I. SUMMARY:

HB 239 amends the Legislative intent and procedures relating to anatomical gifts, as follows:

- Amends the declaration of legislative intent relating to organ and tissue recovery and transplantation;
- Prohibits the modification, prevention, or revocation of a decedent's anatomical gift by specified persons;
- Specifies that a donor document is legally binding;
- Revises the manner of executing anatomical gifts including the authorization of organ-donor stickers with signature lines;
- Revises rights and duties at death of an anatomical gift relating to donee;
- Revises the procedures by which the terms of the anatomical gift may be amended or the gift revoked; and
- Provides for liability protection of the donee, donor, and donor's estate relating to the anatomical gift.

The bill takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

Family Empowerment: The bill specifically eliminates a family member's ability to modify or revoke a decedent's anatomical gift.

B. PRESENT SITUATION:

GENERAL BACKGROUND

Since the 1970s, when organ transplantation became an established medical procedure, nationally the number of organ transplants performed and the number of centers performing transplants have steadily increased. The number of organ transplants has grown from 12,618 in 1988 to 20,961 in 1998. The number of centers performing this surgery has grown from 235 in 1988 to 278 today. [<http://www.life-source.org/HCFAug.html> and <http://www.hcfa.gov/>] According to the United Network for Organ Sharing (UNOS), by September 2001 more than 78,000 individuals were registered on a national waiting list for a kidney, liver, pancreas, intestine, heart, lung or combination thereof. In 2000, 22,854 transplants were performed. [http://www.unos.org/frame_default.asp]

Additionally, more than 13,000 organs were recovered from cadavers in 2000 and more than 5,000 kidneys came from living donors. According to the federal Department of Health and Human Services, estimates show that several thousand people die each year while waiting for an organ or tissue donation, while an estimated 10,000 to 15,000 deaths in the United States each year could result in organ donation, where no such donations were sought.

In 1984, Congress enacted the National Organ Transplant Act, which established the Organ Procurement and Transplantation Network (OPTN), a private sector system to be operated by a contractor to the Department of Health and Human Services (HHS). By 1986, every hospital that performed transplants and all organ procurement organizations (OPOs) were required to follow the rules and regulations of the OPTN in order to receive Medicare and Medicaid reimbursement. [<http://www.ncsl.org/statefed/otdt.htm>]

Federal law requires organ procurement organizations to participate in the OPTN for the purpose of matching donor organs to waiting recipients. [42 U.S.C. § 274] The OPTN is managed by the United Network for Organ Sharing (UNOS) within the Public Health Service of HHS, which cooperates with organ procurement organizations throughout the country to place organs and tissues. Currently, there are 54 OPOs across the country, which provide organ procurement services to some 279 transplant centers. [<http://www.organdonor.gov/>]

ORGAN DONATION IN FLORIDA

There are five federally certified organ placement organizations in Florida:

- LifeLink of Florida (Western Central Florida);
- LifeLink of Southwest Florida;
- LifeQuest, Organ Recovery Services (Northern Florida);
- TransLife/Florida Hospital (Eastern Florida); and
- University of Miami OPO (Southern Florida).

According to the Florida certified OPOs, approximately 2,900 persons are waiting for an organ transplant every day in Florida. [Letter to B.J. Newberger from LifeLink, Life Quest, and Translife, dated December 5, 2001.] In Florida in 1998, approximately 2,190 people were awaiting organ transplants and 171 people died awaiting for a transplant. [Note: 1998 is the most recent year for which complete data is available.] [http://www.unos.org/frame_default.asp]

STATES' LEGISLATIVE ACTIVITIES

In 1968, the National Conference of Commissioners on Uniform State Laws drafted the Uniform Anatomical Gift Act (UAGA), which established legal standards for organ donor cards, prohibited the sale of organs, and designated attending physicians as custodians of donated tissue and organs. In 1987, the UAGA was revised. It has been adopted in all 50 states and the District of Columbia. [<http://www.ncsl.org>]

Within the issue of organ procurement and donation, state legislative activity has centered around various ancillary issues, including the role of health facilities in conducting a diligent search regarding the intent of the deceased to make an anatomical gift upon death. Much of the legislation at the state level has focused on issues relating to consent. Many states have made consent to organ donation a part of the driver's license or state identification card process. In addition, the bequest has been extended to include the following: advance directives; durable power of health attorney; license plate registration; and others.

In the 2001 legislative session, the following states considered bills relating to organ donation and consent:

- Oklahoma enacted a bill which makes the wishes of the deceased made through an advance directive, driver's license designation, or will supersede the families' wishes.
- Delaware enacted a bill which prohibits the next-of-kin from revoking a donor's gift.
- Mississippi considered a bill which would have made anatomical gifts made by a durable power of attorney for health care, living will, or a uniform anatomical gift act, supersede and have precedence over any decision by the family of the donor. The bill died in committee.
- South Dakota enacted a bill which made an anatomical gift irrevocable by any person other than the donor and specified that such a gift does not require the consent of any person after the donor's death.

In the 2000 legislative session, seven states, Indiana, Kentucky, New Mexico, South Carolina, Virginia, Washington, and West Virginia enacted legislation that relates to the issue of consent for anatomical gifts. [<http://www.ncsl.or>] In addition, Florida adopted legislation, ch. 2000-295, L.O.F., which specifically conditioned the authority of a health care surrogate to make an anatomical gift on the existence of some specific declaration by the person regarding an anatomical gift and provided that such declaration could be indicated in a written agreement, an organ and tissue, donor card, a

living will, other advance directive, or a driver's license. [s. 732.912, F.S., which was transferred and renumbered as s. 765.512, F.S. in ch. 2001-226, L.O.F.]

FLORIDA LAW

In 1969, in an effort to encourage organ and tissue donation, the Legislature passed the Florida Uniform Anatomical Gift Act (Act), modeled after the national Uniform Anatomical Gift Act. Florida's act established the process in which individuals, their families, or others could donate organs and tissue for transplantation and research.

Chapter 765, F.S., relates to health care advance directives . Part V of this chapter is specific to anatomical gifts.

Section 765.510, F.S., establishes the Legislature's purpose for the creation of the Anatomical Gifts statutes. Specifically, the Legislature intended to encourage and aid the development of reconstructive medicine and surgery and the development of medical research by regulating the gift of the body, or parts of the body, after the death of a donor.

Section 765.512, F.S., provides that any person able to make a will may donate all or part of his or her body for the purpose of transplantation or medical research. An anatomical gift made by an adult donor and not revoked by the donor is irrevocable and does not require the consent of any person after the donor's death. Also, any member of specified classes of relatives and other persons may make an anatomical gift of parts or all of a decedent's body, in the absence of contrary information or notice of opposition by a member of the specified classes. Persons who may donate all or part of the decedent's body include the spouse, an adult son or daughter, either parent, an adult brother or sister, a grandparent, the guardian of the person at the time of death, or a representative ad litem appointed by the court.

Section 765.514, F.S., provides that an anatomical gift may be made by will or by another document signed by the donor in the presence of two witnesses. If the donation is listed in the donor's will, the donation becomes effective upon the donor's death without waiting for probate. An anatomical gift may be made to an individual specified by name. The law prohibits restrictions on the possible recipient on the basis of race, color, religion, sex, national origin, age, physical handicap, health status, marital status, or economic status. A donor may designate the surgeon or physician to carry out his or her donation wish. However, the physician who serves as the recipient of the donation shall not participate in the removal or transplantation process.

Section 765.516, F.S, provides for amendment or revocation of an anatomical gift. An individual may revoke authorization for donation by: 1) a signed statement, 2) an oral statement made to the donor's spouse or made in the presence of two persons and communicated to the donor's family or attorney, 3) a statement during a terminal illness or injury addressed to an attending physician, or 4) a signed document found on the donor's person or in the donor's effects.

Section 765.517(5), F.S., states that a person who acts in good faith and without negligence is not liable for civil or criminal prosecution when making an anatomical gift.

The Agency for Health Care Administration (AHCA or agency) oversees the program by certifying organ procurement organizations to conduct business in Florida, providing donor education, and maintaining an organ and tissue donor registry in cooperation with the Department of Highway Safety and Motor Vehicles (DHSMV). The Department of Highway Safety and Motor Vehicles permits driver license applicants to register their desire to be an organ and tissue donor by completing a donor document and having the "donor" notation placed on the front of their driver's license. As of October 30, 2001, there are approximately 2,839,129 individuals with the organ

donor notation on their driver's license. The agency provides DHSMV with the donor registration forms. These forms are paid for from the Florida Organ and Tissue Donor Education and Procurement Trust Fund. [s. 381.6024, F.S.] Moneys deposited into the trust fund must be used exclusively for the implementation, administration, and operation of the certification program and the advisory board, for maintaining the organ and tissue donor registry, and for organ and tissue donor education. The Organ and Tissue Procurement and Transplantation Advisory Board, consists of 14 members who are appointed by and report directly to the Secretary of Health Care Administration to serve 3-year terms of office. [s. 381.6023, F.S.]

C. EFFECT OF PROPOSED CHANGES:

HB 239 revises the legislative declaration of intent and revises the prescribed manner of executing anatomical gifts, and makes the following changes:

- Eliminates a decedent's family member, guardian, representative ad litem, or health care surrogate's ability to revoke or modify the terms of the decedent's anatomical gift.
- Provides that any of the specified documents pertaining to anatomical gifts is legally binding.
- Provides that making of an anatomical gift authorizes certain informational requests to be directed to the decedent's family or to third parties.
- Deletes the requirements for witnesses unless a proxy, rather than the donor, signs the uniform donor card.
- Provides for the formant and contents of the organ-donor cards.
- Provides that the signature line signed by the donor is the only requirement for a document of anatomical gift.
- Prohibits mutilation of the hands, neck, or head of a donated body except with the express consent, as specified.
- Revises procedures by which the terms of an anatomical gift may be amended or the gift may be revoked.
- Provides civil liability protection for the donee, donor, or donor's estate for any injury or damage resulting from the making or use of the gift.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 765.510, F.S., relating to legislative declaration of Health Care Advance Directives, to provide more explicit legislative intent language related to organ and tissue recover and transplantation.

Section 2. Amends subsections (1), (2), and (6) of s. 765.512, F.S., relating to persons who may make an anatomical gift, as follows:

Amends subsection (1) to delete redundant language and to specify the prohibition of any modification, denial, or prevention of a decedent's anatomical gift from being made by the following: a family member, guardian, representative ad litem, or health care surrogate.

Amends subsection (2) to clarify the ways a decedent could have executed an agreement concerning his or her anatomical gift, and to expand such agreements to include "a signed organ donor sticker." Provides that such an agreement, in the absence of actual notice of contrary indications, is "evidence of legally sufficient informed consent to donate an anatomical gift" and that such agreement is "legally binding." Provides that such agreement, upon the death of the donor, grants "absolute ownership of the gift to vest with the donee [the person or organization who is the recipient of the gift] upon the death of the donor."

Redesignates subsection (6) as paragraph (6)(a).

Adds paragraph (6)(b) requiring that requests for information regarding the decedent's medical or social history must be directed to the decedent's family or to third parties.

Section 3. Amends subsection (2) of s. 765.514, F.S., relating to the manner of executing anatomical gifts, as follows:

Amends paragraph (2)(a) to delete the requirement for the donor to sign the document in the presence of two witnesses who are required to sign the document in the donor's presence.

Redesignates paragraph (2)(b) to subparagraph (2)(b)1. and deletes the requirement for the witnesses to sign the uniform donor card in the presence of each other. Adds the requirement that witnesses are required only if the donor is unable to sign and the donor card is signed by proxy.

Adds paragraph (2)(b) 2. providing that an organ-donor sticker with a signature line is sufficient as a document of anatomical gift if it is signed by the donor. Requires the sticker to be designed as a "peel-off" and authorizes it to be applied to a charge card or other item typically carried on the person. Provides that the sticker may include other information such as the federally certified Florida OPOs may consider necessary for the facilitation of a simple and easy public promotion and sign-up.

Section 4. Amends s. 765.516, F.S., relating to amendment or revocation of the anatomical gift, as follows:

Clarifies the title.

Amends subsection (1), clarifying that a donor may amend the terms of or revoke an anatomical gift.

Deletes existing paragraph (1)(b), authorizing a donor to amend or revoke an anatomical gift by an oral statement that is:

- Made to the donor's spouse; or
- Made in the presence of two persons and communicated to the donor's family or attorney or to the donee.

Redesignates existing paragraph (1)(c) as paragraph (1)(b).

Redesignates and amends existing paragraph (1)(d) as paragraph (1)(c), relating to the donor's ability to amend or revoke the anatomical gift, to include a signed document found about the donor's *person* and deletes the inclusion of such documents found in the donor's *effects*.

Amends subsection (2), clarifying that the terms of any gift may be amended, specifying the gift may be revoked by certain means, and making certain grammatical changes to the subsection.

Section 5. Amends subsections (1) and (5) of s. 765.517, F.S., relating to rights and duties at death of the donee, as follows:

Amends subsection (1) to prohibit any mutilation of the hands, neck, or head unless consented to by a member of one of a specific class or persons pursuant to s. 765.512(3), F.S., relating to persons who may make anatomical gifts.

Amends subsection (2) to provide liability protection for entities that act or attempt to act in good faith in accordance with the terms of this part or under the anatomical gift laws of another state or foreign country. Deletes requirement that such entities or person act without negligence. Makes grammatical changes to the subsection. Provides that neither an individual who makes the gift, or the individual's estate, is liable for any injury or damage that results from the making or use of the gift.

Section 6. Provides that this act takes effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The sticker authorized by this bill is an alternative to the driver license identification issued by the Department of Highway Safety and Motor Vehicles (DHSMV). Therefore, DHSMV should not incur any cost associated with the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unless public funding is provided, private sector entities, such as organ procurement organizations and charities, would likely incur the cost of developing and distributing the sticker and educating the public regarding the new method of donor registration and identification.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the expenditure of funds.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

According to three of Florida's certified OPOs, the number of times that a family of a potential donor turns down a donation, when there is a signed organ donor card, is statistically insignificant. [December 5, 2001, letter to B.J Newberger, from John R. Campbell, P.A., J.D, Executive Vice President, LifeLink; Chuck J. McCluskey P.A., C.P.T.C, Executive Director, LifeQuest; and Tim Jankiewicz, R.N., C.P.T.C., Director, Transplant Programs, TransLife]

The Florida Catholic Conference has expressed concerns related to the elimination of a family member's ability to deny or prevent an anatomical gift from being made based on the expressed revocation of the anatomical gift by the decedent. In addition, the Conference is concerned that the bill eliminates the ability of a donor to amend the terms of a gift by executing and delivering to the donee a signed statement.

On page 4, line 28, a technical amendment is needed to change the word "licensed" to "certified" to reflect that organ procurement organizations are federally certified, not licensed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON HEALTH PROMOTION:

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