

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 334

SPONSOR: Senator King

SUBJECT: Anatomical Gifts

DATE: November 26, 2001 REVISED: 11/29/01 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill revises chapter 765, part V, F.S., which governs anatomical gifts. The bill prohibits a family member, guardian, representative ad litem, or health care surrogate from modifying a decedent's wishes or denying or preventing an anatomical gift from being made. The bill permits use of a signed organ donor sticker as a method of indicating a person's wish to make an anatomical gift. The bill specifies that a written agreement to make an anatomical gift is evidence of legally sufficient consent to donate, is legally binding, and vests ownership of the gift with the donee upon the death of the donor.

The bill deletes the requirement that two witnesses must sign a donor card in the donor's presence. Instead, witnesses would be required only if the donor was unable to sign, and the card was signed by proxy. The bill amends the ways in which a donor may amend the terms of, or revoke, an anatomical gift and expands legal liability protection for the donor and the donor's family and estate.

This bill substantially amends ss. 765.510, 765.512, 765.514, 765.516, and 765.517, F. S.

## II. Present Situation:

In an effort to encourage organ and tissue donation, the 1969 Legislature enacted legislation modeled after the national Uniform Anatomical Gift Act. Part V of ch. 765, F.S., establishes the process by which individuals, their families, or others may donate organs and tissue.

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.

Amendment or revocation of an anatomical gift is addressed in section 765.516, F.S. 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.

The Agency for Health Care Administration (AHCA or Agency) oversees the program by certifying 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 Organ and Tissue Donor Education and Procurement Trust Fund. 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.

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.

### **III. Effect of Proposed Changes:**

Senate Bill 334 amends chapter 765, F.S., to revise procedures relating to anatomical gifts. The bill amends s. 756.510, F.S., to state in more detail the public's interest in aiding the medical development of the fields of organ and tissue recovery and transplantation. The potential benefits of the program governed by part V of ch. 765, F.S., include saving lives; reducing sickness, pain, suffering, and disability; reducing medical costs; and helping to alleviate the shortage of organs and tissue available for transplantation and research.

Amendments to s. 765.512, F.S., prohibit a family member, guardian, representative ad litem, or health care surrogate from modifying a decedent's wishes or denying or preventing an anatomical gift from being made. The bill permits use of a signed organ donor sticker as a method of indicating a person's wish to make an anatomical gift. In the absence of contrary indications by the decedent, the organ donation document would be a legally sufficient document of informed consent, would be legally binding, and would vest absolute ownership of the gift with the donee upon the death of the donor. The bill adds an authorization for informational requests concerning the decedent's medical and social history to be directed to the decedent's family or to third parties when all or part of a decedent's body is donated.

The bill amends s. 764.514, F.S., to delete the requirement that two witnesses must sign a donor card in the donor's presence. Instead, witnesses would be required only if the donor was unable to sign, and the card was signed by proxy.

As an alternative to the organ donor card, the bill provides for an organ donor sticker with a signature line signed by the donor. The sticker must be designed for peel-off and application upon a charge card or other item that is usually carried on the person. A sticker could contain such other information as the federally licensed Florida organ procurement organizations consider necessary for simple and easy public promotion and signing up of donors.

The bill amends s. 765.516, F.S., which establishes the ways in which a donor may amend the terms of, or revoke, an anatomical gift. The bill deletes the option of amending or revoking an anatomical gift by an oral statement that is made to the donor's spouse or in the presence of two persons and communicated to the donor's family or attorney or to the donee. The bill also deletes the acceptability of a signed document found in the donor's effects. In addition to amending or revoking a will, the three remaining methods by which a donor could amend the terms of, or revoke, an anatomical gift would be: 1) a signed statement delivered to the donee, 2) a statement during a terminal illness or injury addressed to a physician and communicated by the physician to the procurement organization, or 3) a signed document found on or about the donor's person.

Section 765.517, F.S., is amended to specify that any mutilation of the hands, neck, or head is strictly prohibited unless consent to waive that prohibition is given by a member of one of the classes of persons listed in s. 765.512, F.S., which would include the decedent's spouse, an adult son or daughter, either parent, an adult brother or sister, a grandparent, a guardian of the person of the decedent at the time of his or her death, or a representative ad litem appointed by a court

of competent jurisdiction. The bill provides that neither an individual, nor the individual's estate is liable for any injury or damage that results from the making or the use of an anatomical gift.

The bill takes effect upon becoming a law.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

# 1 by Health, Aging and Long-Term Care:

Makes a technical correction by changing the word “licensed” to “certified”.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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