

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: CS/SB 334

SPONSOR: Committee on Judiciary and Senator King

SUBJECT: Anatomical Gifts

DATE: February 19, 2002 REVISED: _____

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

I. Summary:

This bill revises Part V of chapter 765, F.S., which governs anatomical gifts, as follows:

- Expands the legislative declaration regarding organ and tissue transplantation and research;
- Prohibits the override by a family member, guardian, representative ad litem, or health care surrogate of a decedent’s wishes regarding an anatomical gift;
- Specifies that a written donor document is legally sufficient and is legally binding;
- Revises the provisions regarding amendment or revocation of a donor designation by eliminating the option to amend or revoke orally through a statement to the spouse;
- Authorizes the decedent’s medical providers, family or other third party to furnish information regarding the decedent’s medical and social history;
- Eliminates the restriction on unnecessary mutilation of a body part during removal under specified circumstances;
- Specifies that the remainder of the body shall be made available, rather than vests, with specified family members or other persons; and
- Expands legal immunity for the donor and the donor’s family and estate for injury or damages arising from the anatomical gift.

This bill substantially amends ss. 765.510, 765.512, 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 tissue¹. 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. *See* s. 765.510, F.S.

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 is irrevocable (unless revoked by the donor) 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 another specified class. 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. 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.

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. The donor 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 anatomical gift program by certifying procurement organizations² to conduct business 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

¹ Organs encompass the heart, lung, liver, kidney, pancreas, and intestine. Tissue refers to cornea, bone, cartilage, skin, heart valves, and saphenous vein.

² The identification of cadaver donors and coordination of organ retrieval by surgical teams is the responsibility of 59 Organ Procurement Organizations (OPOs) across the U.S. OPO's and tissue banks recover, preserve, and distribute organs and tissues for transplant. Each OPO has a geographic region within which it serves hospitals where potential donors have been identified. Under a government contract, the nation's Organ Procurement and Transplantation Network formulates allocation policy based on input from transplant professionals, patients, donor groups, and the public. Ultimately, these policies determine, for any given donor, which waiting patient has the highest priority. See websites on Uniform Network of Organ Sharing (<http://www.unos.org>) and U.S. Department of Health and Human Services, Health Resources and Services Administration (<http://www.hrsa.gov>).

Florida); TransLife/Florida Hospital (Easter Florida); and University of Miami OPO (Southern Florida). The Agency also provides donor education. In conjunction with the Department of Highway Safety and Motor Vehicles (DHSMV), the Agency maintains an organ and tissue donor registry. The DHSMV permits driver's 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. The donor registry provides for 24 hour access 7 days a week for purposes of securing access to those uniform donor cards or other documentation underlying the driver's license card donor notation in the event donees need verification for anatomical gifts. 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.

The 14-member Organ and Tissue Procurement and Transplantation Advisory Board is appointed by and report directly to the Secretary of Health Care Administration to serve 3-year terms of office. *See* s. 381.6023, F.S.

III. Effect of Proposed Changes:

This bill revises provisions in Part V of chapter 765, F.S., relating to anatomical gifts, as follows:

Section 1 amends s. 765.510, F.S., relating to legislative declarations, by stating in more detail the public's interest in aiding the medical development of the fields of organ and tissue recovery and transplantation. The newly stated potential public benefits 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.

Section 2 amends s. 765.512, F.S., relating to persons making anatomical gifts. It prohibits a family member, guardian, representative ad litem, or health care surrogate from modifying or otherwise overriding a decedent donor's wishes to make an anatomical gift. It adds that any organ donation document or other document making an anatomical gift will now constitute "evidence of [a] legally sufficient informed consent" and will be "legally binding", provided there is no notice of contrary indications. This section also authorizes medical providers, family members and other persons to provide information regarding a donor's medical and social history.

Section 3 amends s. 765.516, F.S., relating to the amendment or revocation of an anatomical gift. A donor will no longer be able to amend the terms of or revoke an anatomical gift by orally stating so to his or her spouse. In addition, a signed document to amend or revoke an anatomical gift that is found in the donor's effects will no longer be acceptable although a signed document found "about" the donor's person will be. Therefore, the four methods by which an anatomical gift may be amended or revoked are: 1) A signed statement delivered to the donee, 2) A statement made to two persons, other than the spouse, and communicated to the donor's family, the donor's attorney or the donee, 3) A statement during a terminal illness or injury addressed to a

physician and communicated by the physician to the procurement organization, or 4) A signed document found on or about the donor's person.

Section 4 amends s. 765.517, F.S., relating to the rights and duties of a donee upon a donor's death. This section is amended to remove the restriction on unnecessary mutilation of the body in removal of a part before or after embalming. It also clarifies that a body shall be made available to, in lieu of vests in the surviving spouse, next of kin or other persons, which conforms with case law regarding lack of a right in ownership to a body. 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, regardless of whether made or used in good faith or not.

Section 5 provides that the bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may facilitate greater participation by those willing to execute pre-death organ and tissue donor designations. According to organ procurement organizations in Florida³, there are approximately 2,900 persons waiting for a transplant for which there are 340 organ donors annually. As of October 30, 2001, there were approximately 2,839,129 individuals with the organ donor notation on their driver's license. A single donor can potentially benefit as many as 50 people. It is unknown what percentage of families or other authorized persons in the state of Florida currently modify, override or otherwise challenge a valid donor's organ and tissue designation although reportedly it occurs very infrequently. Even though current law does not require the consent of a family member or other specified person when there is a pre-existing organ or tissue designation, it is a matter of general practice for hospitals and other donees to consult

³ LifeLink Foundation, LifeQuest, and TransLife.

with and even seek “concurring” consent from families to either secure additional medical, physical or social information or direction as to an anatomical gift. However, the bill makes it much clearer that consent is not required and will make it more difficult for family members and other specified individuals to modify, override or otherwise challenge the validity of a designation of an anatomical gift.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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