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1 A bill to be entitled
2 An act relating to organ and tissue donation; amending s.
3 765.203, F.S.; deleting a provision in the form that
4 designates a health care surrogate that provides an
5 exception for anatomical gifts; amending s. 765.512, F.S.;
6 revising provisions for making an organ donation; adding
7 additional persons to the list of persons who may donate a
8 decedent's body; removing the provision prohibiting a
9 spouse from making a donation if the decedent's adult son
10 or daughter objects; amending s. 765.514, F.S.; providing
11 additional mechanisms for making an anatomical gift
12 including registering with the organ and tissue donor
13 registry; revising the uniform donor card to specify the
14 type of donation; deleting a statement of public policy
15 that prohibits restrictions on who may receive an
16 anatomical gift, a provision specifying who can accept a
17 gift, and a provision designating a physician to carry out
18 appropriate procedures; amending s. 765.515, F.S.;
19 requiring the Department of Highway Safety and Motor
20 Vehicles to inform the donor registry of instances of
21 making an anatomical gift and of withdrawal of an
22 anatomical gift; deleting a provision requiring the Agency
23 for Health Care Administration and the department to
24 maintain a donor registry; creating s. 765.5155, F.S.;
25 providing legislative intent with respect to establishing
26 an online organ and tissue donor registry; requiring
27 administration of the donor registry to be procured by
28 competitive solicitation; specifying the duties of the
29 contractor including the operation of the registry, a

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30 continuing public education program about organ donation,
31 and the preparation of an annual report; providing for
32 funding and for voluntary contributions to the registry;
33 designating the donor registry as the "Joshua Abbott Organ
34 and Tissue Donor Registry"; amending s. 765.516, F.S.;
35 authorizing revocation of an anatomical gift by a donor
36 through removal of his or her name from the registry;
37 amending s. 765.517, F.S.; revising provisions relating to
38 verification of a donor's consent at death; amending s.
39 765.521, F.S.; conforming a cross-reference; amending s.
40 765.522, F.S.; revising duties of hospital administrators
41 with respect to reporting suitable donor candidates at or
42 near the time of death; updating references to organ
43 procurement organizations; repealing s. 765.5215, F.S.,
44 relating to an education program relating to anatomical
45 gifts; repealing s. 765.5216, F.S., relating to the organ
46 and tissue donor education panel; providing an effective
47 date.

48
49 Be It Enacted by the Legislature of the State of Florida:

50
51 Section 1. Section 765.203, Florida Statutes, is amended to
52 read:

53 765.203 Suggested form of designation.--A written
54 designation of a health care surrogate executed pursuant to this
55 chapter may, but need not be, in the following form:

56
57 DESIGNATION OF HEALTH CARE SURROGATE
58

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59 Name: _____ (Last) _____ (First) _____ (Middle Initial) _____

60 In the event that I have been determined to be incapacitated
61 to provide informed consent for medical treatment and surgical
62 and diagnostic procedures, I wish to designate as my surrogate
63 for health care decisions:

64
65 Name:

66 Address:

67 _____ Zip Code: _____

68
69 Phone: _____

70 If my surrogate is unwilling or unable to perform his or her
71 duties, I wish to designate as my alternate surrogate:

72 Name:

73 Address:

74 _____ Zip Code: _____

75
76 Phone: _____

77 I fully understand that this designation will permit my
78 designee to make health care decisions, ~~except for anatomical~~
79 ~~gifts, unless I have executed an anatomical gift declaration~~
80 ~~pursuant to law,~~ and to provide, withhold, or withdraw consent on
81 my behalf; to apply for public benefits to defray the cost of
82 health care; and to authorize my admission to or transfer from a
83 health care facility.

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84 Additional instructions (optional):

85 I further affirm that this designation is not being made as
86 a condition of treatment or admission to a health care facility.
87 I will notify and send a copy of this document to the following
88 persons other than my surrogate, so they may know who my
89 surrogate is.

90 Name:

91 Name:

92 Signed:

93 Date:

94

Witnesses: 1. _____

95

2. _____

96

97 Section 2. Subsections (1), (2), (3), and (4) of section
98 765.512, Florida Statutes, are amended to read:

99 765.512 Persons who may make an anatomical gift.--

100 (1) Any person who may make a will may give all or part of
101 his or her body for any purpose specified in s. 765.513. ~~s.~~
102 ~~765.510~~, The gift is effective ~~to take effect~~ upon the death of
103 the donor. ~~An anatomical gift made by an adult donor and not~~
104 ~~revoked by the donor as provided in s. 765.516 is irrevocable~~
105 ~~after the donor's death. A family member, guardian,~~
106 ~~representative ad litem, or health care surrogate of an adult~~
107 ~~donor who has made an anatomical gift pursuant to subsection (2)~~
108 ~~may not modify, deny, or prevent a donor's wish or intent to make~~
109 ~~an anatomical gift from being made after the donor's death.~~

110 (a)(2) If the decedent makes ~~has executed an agreement~~

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111 ~~concerning~~ an anatomical gift, by one of the methods listed in s.
112 765.514(1), signing an organ and tissue donor card, by expressing
113 ~~his or her wish to donate in a living will or advance directive,~~
114 ~~or by signifying his or her intent to donate on his or her~~
115 ~~driver's license or in some other written form has indicated his~~
116 ~~or her wish to make an anatomical gift,~~ and in the absence of
117 actual notice of contrary indications by the decedent, the
118 document or entry in the organ and tissue registry is ~~evidence of~~
119 legally sufficient evidence of the decedent's informed consent to
120 donate an anatomical gift ~~and is legally binding.~~

121 (b) An anatomical gift made by a qualified donor and not
122 revoked by the donor, as provided in s. 765.516, is irrevocable
123 after the donor's death. A family member, guardian,
124 representative ad litem, or health care surrogate may not modify,
125 deny, or prevent a donor's wish or intent to make an anatomical
126 gift after the donor's death.

127 (2) A health care ~~Any~~ surrogate designated by the decedent
128 pursuant to part II of this chapter may give all or any part of
129 the decedent's body for any purpose specified in s. 765.513
130 absent actual notice of contrary indications by the decedent ~~s.~~
131 ~~765.510.~~

132 (3) If the decedent has not made ~~executed an agreement~~
133 ~~concerning~~ an anatomical gift or designated a health surrogate
134 ~~pursuant to part II of this chapter to make an anatomical gift~~
135 ~~pursuant to the conditions of subsection (2),~~ a member of one of
136 the classes of persons listed below, in the order of priority
137 listed ~~stated~~ and in the absence of actual notice of contrary
138 indications by the decedent or actual notice of opposition by a
139 member of ~~the same or~~ a prior class, may give all or any part of

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140 the decedent's body for any purpose specified in s. 765.513 ~~s.~~
141 ~~765.510~~:

- 142 (a) The spouse of the decedent;
143 (b) An adult son or daughter of the decedent;
144 (c) Either parent of the decedent;
145 (d) An adult brother or sister of the decedent;
146 (e) An adult grandchild of the decedent;
147 (f) A grandparent of the decedent;
148 (g) A close personal friend, as defined in s. 765.101;
149 (h) ~~(f)~~ A guardian of the person of the decedent at the time
150 of his or her death; or

151 (i) ~~(g)~~ A representative ad litem ~~who shall be~~ appointed by
152 a court of competent jurisdiction ~~forthwith~~ upon a petition heard
153 ex parte filed by any person, who ~~which representative ad litem~~
154 shall ascertain that no person of higher priority exists who
155 objects to the gift of all or any part of the decedent's body and
156 that no evidence exists of the decedent's having made a
157 communication expressing a desire that his or her body or body
158 parts not be donated upon death. †

159
160 ~~but no gift shall be made by the spouse if any adult son or~~
161 ~~daughter objects, and provided that Those of higher priority who,~~
162 ~~if they are reasonably available must be, have been contacted and~~
163 ~~made aware of the proposed gift, and further provided that a~~
164 ~~reasonable search must be conducted which shows is made to show~~
165 ~~that there would have been no objection to the gift on religious~~
166 ~~grounds by the decedent.~~

167 (4) A donee may not accept an anatomical gift if the donee
168 has actual notice of contrary indications by the donor ~~decedent~~

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169 ~~or, in the case of a spouse making the gift, an objection of an~~
170 ~~adult son or daughter~~ or actual notice that a gift by a member of
171 a class is opposed by a member of ~~the same or~~ a prior class, ~~the~~
172 ~~donee shall not accept the gift.~~

173 Section 3. Section 765.514, Florida Statutes, is amended to
174 read:

175 765.514 Manner of making ~~executing~~ anatomical gifts.--

176 (1) A person may make a gift of all or part of his or her
177 ~~the~~ body under s. 765.512(1) ~~may be made by will:~~

178 (a) Signing an organ and tissue donor card.

179 (b) Registering online with the organ and tissue donor
180 registry.

181 (c) Signifying an intent to donate on his or her driver's
182 license or identification card issued by the Department of
183 Highway Safety and Motor Vehicles. Revocation, suspension,
184 expiration, or cancellation of the driver's license or
185 identification card does not invalidate the gift.

186 (d) Expressing a wish to donate in a living will or other
187 advance directive.

188 (e) Executing a will that includes a provision indicating
189 that the testator wishes to make an anatomical gift. The gift
190 becomes effective upon the death of the testator without waiting
191 for probate. If the will is not probated or if it is declared
192 invalid for testamentary purposes, the gift is nevertheless valid
193 to the extent that it has been acted upon in good faith.

194 ~~(f)(2)(a)~~ Expressing a wish to donate in A gift of all or
195 ~~part of the body under s. 765.512(1) may also be made by a~~
196 document other than a will. ~~The gift becomes effective upon the~~
197 ~~death of the donor.~~ The document must be signed by the donor in

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198 the presence of two witnesses who shall sign the document in the
199 donor's presence. If the donor cannot sign, the document may be
200 signed for him or her at the donor's direction and in his or her
201 presence and the presence of two witnesses who must sign the
202 document in the donor's presence. Delivery of the document of
203 gift during the donor's lifetime is not necessary to make the
204 gift valid.

205 ~~(b)~~ The following form of written document is instrument
206 ~~shall be~~ sufficient for any person to give all or part of his or
207 her body for the purposes of this part:

UNIFORM DONOR CARD

211 The undersigned hereby makes this anatomical gift, if medically
212 acceptable, to take effect on death. The words and marks below
213 indicate my desires:

214
215 I give:

- 216 (a) ___ any needed organs, tissues, or eyes ~~parts~~;
217 (b) ___ only the following organs, tissues, or eyes ~~or~~
218 ~~parts~~

219 [Specify the organs, tissues, or eyes ~~organ(s) or~~
220 ~~part(s)~~]

221
222 for the purpose of transplantation, therapy, medical research, or
223 education;

- 224 (c) ___ my body for anatomical study if needed.

225 Limitations or special wishes, if any:

226 [~~+~~If applicable, list specific donee; this must be arranged in

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advance with the donee.]+

Signed by the donor and the following witnesses in the presence of each other: (Signature of donor) (Date of birth of donor) (Date signed) (City and State) (Witness) (Witness) (Address) (Address)

(2) ~~(3)~~ The gift may be made to a donee listed in s. 765.513 and the donee may be specified by name. ~~If the donee is not specified by name, the gift may be accepted by the attending physician as donee upon or following the donor's death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may accept the gift as donee upon or following death in the absence of any expressed indication that the donor desired otherwise. However, the Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, sex, national origin, age, physical handicap, health status, marital status, or economic status, and such restrictions are hereby declared void and unenforceable. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.~~

~~(4)~~ Notwithstanding s. 765.517(2), the donor may designate

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256 ~~in his or her will or other document of gift the surgeon or~~
257 ~~physician to carry out the appropriate procedures. In the~~
258 ~~absence of a designation or if the designee is not available, the~~
259 ~~donee or other person authorized to accept the gift may employ or~~
260 ~~authorize any surgeon or physician for the purpose.~~

261 (3)~~(5)~~ Any gift by a health care surrogate designated by
262 the decedent pursuant to part II of this chapter or a member of a
263 class designated in s. 765.512(3) must be made by a document
264 signed by that person or made by that person's witnessed
265 telephonic discussion, telegraphic message, or other recorded
266 message.

267 Section 4. Section 765.515, Florida Statutes, is amended to
268 read:

269 765.515 Delivery of donor document;~~organ and tissue donor~~
270 ~~registry.--~~

271 (1) If a gift is made pursuant to ~~through the program~~
272 ~~established by the Agency for Health Care Administration and the~~
273 ~~Department of Highway Safety and Motor Vehicles under the~~
274 ~~authority of s. 765.521, the completed donor registration card~~
275 ~~shall be delivered to the Department of Highway Safety and Motor~~
276 ~~Vehicles and the department must communicate the donor's intent~~
277 ~~to the organ and tissue donor registry processed in a manner~~
278 ~~specified in subsection (4), but delivery is not necessary to the~~
279 ~~validity of the gift. If the donor withdraws the gift, the~~
280 ~~records of the Department of Highway Safety and Motor Vehicles~~
281 ~~must ~~shall~~ be updated to reflect such withdrawal and the~~
282 ~~department must communicate the withdrawal to the organ and~~
283 ~~tissue donor registry for the purpose of updating the registry.~~

284 (2) If a gift is not made through the program established

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285 ~~by the Agency for Health Care Administration and the Department~~
286 ~~of Highway Safety and Motor Vehicles under the authority of s.~~
287 ~~765.521 and is made by the donor to a specified donee, the~~
288 ~~document, other than a will, may be delivered to the donee to~~
289 ~~expedite the appropriate procedures immediately after death, but~~
290 ~~delivery is not necessary to the validity of the gift. Such~~
291 ~~document may be deposited in any hospital, bank, storage~~
292 ~~facility, or registry office that accepts such documents for~~
293 ~~safekeeping or to facilitate the donation of organs and tissue~~
294 ~~for facilitation of procedures after death.~~

295 (3) ~~At~~ On the request of any interested party upon or after
296 the donor's death, the person in possession shall produce the
297 document for examination.

298 ~~(4) The Agency for Health Care Administration and the~~
299 ~~Department of Highway Safety and Motor Vehicles shall develop and~~
300 ~~implement an organ and tissue donor registry which shall record,~~
301 ~~through electronic means, organ and tissue donation documents~~
302 ~~submitted through the driver license identification program or by~~
303 ~~other sources. The registry shall be maintained in a manner~~
304 ~~which will allow, through electronic and telephonic methods,~~
305 ~~immediate access to organ and tissue donation documents 24 hours~~
306 ~~a day, 7 days a week. Hospitals, organ and tissue procurement~~
307 ~~agencies, and other parties identified by the agency by rule~~
308 ~~shall be allowed access through coded means to the information~~
309 ~~stored in the registry. Costs for the organ and tissue donor~~
310 ~~registry shall be paid from the Florida Organ and Tissue Donor~~
311 ~~Education and Procurement Trust Fund created by s. 765.52155.~~
312 ~~Funds deposited into the Florida Organ and Tissue Donor Education~~
313 ~~and Procurement Trust Fund shall be utilized by the Agency for~~

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314 ~~Health Care Administration for maintaining the organ and tissue~~
315 ~~donor registry and for organ and tissue donor education.~~

316 Section 5. Section 765.5155, Florida Statutes, is created
317 to read:

318 765.5155 Organ and tissue donor registry; education
319 program.--

320 (1) The Legislature finds that:

321 (a) There is a shortage of organ and tissue donors in this
322 state willing to provide the organs and tissue that could save
323 lives or enhance the quality of life for many persons.

324 (b) There is a need to encourage the various minority
325 populations of this state to donate organs and tissue.

326 (c) A statewide organ and tissue donor registry having an
327 online donor registration process coupled with an enhanced
328 program of donor education will lead to an increase in the number
329 of organ and tissue donors registered in this state, thus
330 affording more persons who are awaiting organ or tissue
331 transplants the opportunity for a full and productive life.

332 (2) The Agency for Health Care Administration and the
333 Department of Highway Safety and Motor Vehicles shall jointly
334 contract for the operation of an organ and tissue donor registry
335 and education program. The contractor shall be procured by
336 competitive solicitation pursuant to chapter 287, notwithstanding
337 any exemption in s. 287.057(5)(f). When awarding the contract,
338 priority shall be given to existing nonprofit groups that are
339 based within the state, have expertise working with organ and
340 tissue procurement organizations, have expertise in conducting
341 statewide organ and tissue donor public education campaigns, and
342 represent the needs of the organ and tissue donation community in

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343 the state.

344 (3) The contractor shall be responsible for:

345 (a) The development, implementation, and maintenance of an
346 interactive web-based organ and tissue donor registry that,
347 through electronic means, allows for online organ donor
348 registration and the recording of organ and tissue donation
349 records submitted through the driver's license identification
350 program or through other sources.

351 1. The registry must be maintained in a manner that allows,
352 through electronic and telephonic methods, immediate access to
353 organ and tissue donation records 24 hours a day, 7 days a week.

354 2. Access to the registry must be through coded and secure
355 means to protect the integrity of the data in the registry.

356 (b) A continuing program to educate and inform medical
357 professionals, law enforcement agencies and officers, other state
358 and local government employees, high school students, minorities,
359 and the public about the laws of this state relating to
360 anatomical gifts and the need for anatomical gifts.

361 1. Existing community resources, when available, must be
362 used to support the program and volunteers may assist the program
363 to the maximum extent possible.

364 2. The contractor shall coordinate with the head of a state
365 agency or other political subdivision of the state, or his or her
366 designee, to establish convenient times, dates, and locations for
367 educating that entity's employees.

368 (c) Preparing and submitting an annual written report to
369 the Agency for Health Care Administration by December 31 of each
370 year. The report must include:

371 1. The number of donors on the registry and an analysis of

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372 the registration rates by location and method of donation;

373 2. The characteristics of donors as determined from
374 registry information submitted directly by the donors or by the
375 Department of Highway Safety and Motor Vehicles;

376 3. The annual dollar amount of voluntary contributions
377 received by the contractor;

378 4. A description of the educational campaigns and
379 initiatives implemented during the year and an evaluation of
380 their effectiveness in increasing enrollment on the registry; and

381 5. An analysis of Florida's registry compared with other
382 states' donor registries.

383 (4) Costs for the organ and tissue donor registry and
384 education program shall be paid by the Agency for Health Care
385 Administration from the funds deposited into the Health Care
386 Trust Fund pursuant to ss. 320.08047 and 322.08, which are
387 designated for maintaining the organ and tissue donor registry
388 and education program. In addition, the contractor may receive
389 and use voluntary contributions to help support the registry and
390 provide education.

391 (5) The organ and tissue donor registry established by this
392 section is designated as the "Joshua Abbott Organ and Tissue
393 Registry."

394 Section 6. Paragraph (e) is added to subsection (1) of
395 section 765.516, Florida Statutes, to read:

396 765.516 Amendment of the terms of or the revocation of the
397 gift.--

398 (1) A donor may amend the terms of or revoke an anatomical
399 gift by:

400 (e) Removing his or her name from the organ and tissue

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401 donor registry.

402 Section 7. Subsection (3) of section 765.517, Florida
403 Statutes, is amended to read:

404 765.517 Rights and duties at death.--

405 (3) The organ procurement organization, tissue bank, or eye
406 bank, or hospital medical professionals under the direction
407 thereof, may perform any and all tests to evaluate the deceased
408 as a potential donor and any invasive procedures on the deceased
409 body in order to preserve the potential donor's organs. These
410 procedures do not include the surgical removal of an organ or
411 penetrating any body cavity, specifically for the purpose of
412 donation, until:

413 (a) It has been verified that the deceased's consent to
414 donate appears in the organ and tissue donor registry or a
415 properly executed donor card or document is located; or~~7~~

416 (b) If a properly executed donor card or document cannot be
417 located or the deceased's consent is not listed in the organ and
418 tissue donor registry, a person specified in s. 765.512(2) or (3)
419 s. ~~765.512(3)~~ has been located, has been notified of the death,
420 and has granted legal permission for the donation.

421 Section 8. Subsection (1) of section 765.521, Florida
422 Statutes, is amended to read:

423 765.521 Donations as part of driver license or
424 identification card process.--

425 (1) The Agency for Health Care Administration and the
426 Department of Highway Safety and Motor Vehicles shall develop and
427 implement a program encouraging and allowing persons to make
428 anatomical gifts as a part of the process of issuing
429 identification cards and issuing and renewing driver licenses.

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430 The donor registration card distributed by the Department of
431 Highway Safety and Motor Vehicles shall include the information
432 required by the uniform donor card under s. 765.514 ~~material~~
433 ~~specified by s. 765.514(2)(b) and may require~~ such additional
434 ~~information, and include such additional material,~~ as determined
435 ~~may be deemed~~ necessary by the ~~that~~ department. The department of
436 ~~Highway Safety and Motor Vehicles~~ shall also develop and
437 implement a program to identify donors, which includes ~~program~~
438 ~~shall include~~ notations on identification cards, driver licenses,
439 and driver records or such other methods as the department
440 develops to ~~may develop.~~ This program shall include, after an
441 ~~individual has completed a donor registration card, making a~~
442 ~~notation on the front of the driver license or identification~~
443 ~~card that~~ clearly indicate ~~indicates~~ the individual's intent to
444 donate the individual's organs, tissues, or eyes ~~tissue~~. A
445 notation on an individual's driver license or identification card
446 that the individual intends to donate organs, ~~or~~ tissues, or eyes
447 satisfies ~~is deemed sufficient to satisfy~~ all requirements for
448 consent to organ or tissue donation. The Agency for Health Care
449 Administration shall provide the necessary supplies and forms
450 from ~~through~~ funds appropriated from general revenue or
451 contributions from interested voluntary, nonprofit organizations.
452 The department of ~~Highway Safety and Motor Vehicles~~ shall provide
453 the necessary recordkeeping system from ~~through~~ funds
454 appropriated from general revenue. The Department of Highway
455 Safety and Motor Vehicles and the Agency for Health Care
456 Administration shall incur no liability in connection with the
457 performance of any acts authorized herein.

458 Section 9. Subsections (2) and (6) of section 765.522,

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459 Florida Statutes, are amended to read:

460 765.522 Duty of certain hospital administrators; liability
461 of hospital administrators, organ procurement organizations, eye
462 banks, and tissue banks.--

463 (2) Where, based on accepted medical standards, a hospital
464 patient is a suitable candidate for organ or tissue donation, the
465 hospital administrator or the hospital administrator's designee
466 shall, at or near the time of death, notify the appropriate
467 organ, eye, or tissue recovery program, which shall access the
468 organ and tissue donor registry created by s. 765.5155 ~~s.~~
469 ~~765.515(4)~~ to ascertain the existence of an entry in the registry
470 that has not been revoked, a donor card, or a document executed
471 by the decedent. In the absence of an entry in the donor
472 registry, a donor card, organ donation sticker or organ donation
473 imprint on a driver's license, or other properly executed
474 document, the organ, eye, or tissue recovery program ~~hospital~~
475 ~~administrator or designee~~ shall request:

476 (a) The patient's health care surrogate, as authorized
477 ~~permitted~~ in s. 765.512(2); or

478 (b) If the patient does not have a surrogate, or the
479 surrogate is not reasonably available, any of the persons
480 specified in s. 765.512(3), in the order and manner listed ~~of~~
481 ~~priority stated in s. 765.512(3),~~

482
483 to consent to the gift of all or any part of the decedent's body
484 for any purpose specified in this part. Except as provided in s.
485 765.512, in the absence of actual notice of opposition, consent
486 need only be obtained from the person or persons in the highest
487 priority class reasonably available.

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488 (6) The hospital administrator or a designee shall, at or
489 near the time of death of a potential organ donor, directly
490 notify the affiliated ~~Health Care Financing Administration~~
491 ~~designated~~ organ procurement organization designated by the
492 United States Department of Health and Human Services of the
493 potential organ donor. This organ procurement organization must
494 offer any organ from such a donor first to patients on a Florida-
495 based local or state organ sharing transplant list. For the
496 purpose of this subsection, the term "transplant list" includes
497 certain categories of national or regional organ sharing for
498 patients of exceptional need or exceptional match, as approved or
499 mandated by the Organ Procurement and Transplantation Network, or
500 its agent ~~United Network for Organ Sharing~~. This notification may
501 ~~must~~ not be made to a tissue bank or eye bank in lieu of the
502 organ procurement organization unless the tissue bank or eye bank
503 is also a ~~Health Care Financing Administration~~ designated as an
504 organ procurement organization by the United States Department of
505 Health and Human Services.

506 Section 10. Sections 765.5215 and 765.5216, Florida
507 Statutes, are repealed.

508 Section 11. This act shall take effect July 1, 2008.