

1 A bill to be entitled
2 An act relating to the Revised Uniform Anatomical Gift
3 Act; creating s. 765.5101, F.S.; providing a short title;
4 creating s. 765.5102, F.S.; providing definitions;
5 creating s. 765.5103, F.S.; providing that the revised act
6 applies to an anatomical gift or amendment to, revocation
7 of, or refusal to make an anatomical gift, whenever made;
8 creating s. 765.5104, F.S.; specifying who may make an
9 anatomical gift before the donor's death; creating s.
10 765.5105, F.S.; providing the manner of making an
11 anatomical gift before the donor's death; creating s.
12 765.5106, F.S.; providing for amending or revoking an
13 anatomical gift before the donor's death; creating s.
14 765.5107, F.S.; specifying the manner of refusal to make
15 an anatomical gift; providing the effect of such a
16 refusal; creating s. 765.5108, F.S.; providing for the
17 preclusive effect of an anatomical gift, amendment, or
18 revocation in certain circumstances; providing exceptions;
19 creating s. 765.5109, F.S.; specifying who may make an
20 anatomical gift of a decedent's body or part; creating s.
21 765.5110, F.S.; specifying the manner of making, amending,
22 or revoking an anatomical gift of a decedent's body or
23 part; creating s. 765.5111, F.S.; specifying persons that
24 may receive an anatomical gift; providing for the purpose
25 of an anatomical gift; providing that a person may not
26 accept an anatomical gift if the person knows that the
27 gift was not effectively made under specified provisions
28 or if the person knows that the decedent made a refusal

29 | that was not revoked; creating s. 765.5112, F.S.;

30 | requiring specified persons to make a reasonable search of

31 | an individual who the person reasonably believes is dead

32 | or near death for a document of gift or other information

33 | identifying the individual as a donor or as an individual

34 | who made a refusal; providing duties if a document of gift

35 | or a refusal to make an anatomical gift is located;

36 | providing immunity from criminal or civil liability for

37 | failure to discharge specified duties; creating s.

38 | 765.5113, F.S.; providing that delivery of a document of

39 | gift is not a requirement for its effectiveness; requiring

40 | a person in possession of a document of gift or a refusal

41 | to make an anatomical gift with respect to the individual

42 | to allow examination and copying of the document; creating

43 | s. 765.5114, F.S.; specifying rights and duties of

44 | procurement organizations when an individual has been

45 | referred to them; allowing the person to whom a part

46 | passes under specified provisions to conduct any

47 | reasonable examination necessary to ensure the medical

48 | suitability of the body or part for its intended purpose

49 | unless otherwise prohibited; requiring a procurement

50 | organization, upon the death of a minor who was a donor or

51 | who had refused, to conduct a reasonable search for the

52 | parents of the minor and provide them with an opportunity

53 | to revoke or amend the gift or revoke the refusal;

54 | providing that the rights of the person to whom a part

55 | passes under a specified provision are superior to the

56 | rights of all others with respect to the part; prohibiting

57 both the physician who attends the decedent at death and
58 the physician who determines the time of death from
59 participating in removing or transplanting a part;
60 creating s. 765.5115, F.S.; requiring each hospital in
61 this state to enter into agreements or affiliations with
62 procurement organizations for specified purposes; creating
63 s. 765.5117, F.S.; prohibiting intentional falsification,
64 forgery, and other acts concerning a document of gift, an
65 amendment or revocation of a document of gift, or a
66 refusal in order to obtain a financial gain; providing
67 criminal penalties; creating s. 765.5118, F.S.; providing
68 immunity in a civil action, criminal prosecution, or
69 administrative proceeding to a person who acts in
70 accordance with the act or with the applicable anatomical
71 gift law of another state, or attempts in good faith to do
72 so; providing immunity from liability to the donor and the
73 donor's estate for use of the gift; permitting reliance on
74 specified representations in determining whether an
75 anatomical gift has been made, amended, or revoked;
76 creating s. 765.5119, F.S.; specifying the law governing
77 validity of a document of gift; providing for the law
78 governing the interpretation of a document of gift in
79 certain circumstances; providing a presumption of
80 validity; renumbering s. 765.5155, F.S., relating to the
81 organ and tissue donor registry, as s. 765.5120, F.S.;
82 renumbering s. 765.51551, F.S., relating to an organ and
83 tissue donor registry public records exemption, as s.
84 765.51201, F.S.; creating s. 765.5121, F.S.; providing for

85 | the effect of an anatomical gift on an advance healthcare
86 | directive; creating s. 765.5122, F.S.; requiring
87 | cooperation between medical examiners and procurement
88 | organizations; creating s. 765.5123, F.S.; providing for
89 | facilitation of anatomical gifts from decedents whose
90 | bodies are under the jurisdiction of medical examiners;
91 | requiring persons with information requested by a medical
92 | examiner conducting a medicolegal examination about a
93 | donor or prospective donor whose body is under the
94 | examiner's jurisdiction to provide that information as
95 | expeditiously as possible; requiring a medical examiner
96 | and procurement organization to cooperate in the timely
97 | removal of a part when recovery of the part will not
98 | interfere with the examination; requiring consultation
99 | between a medical examiner and a procurement organization
100 | when the medical examiner believes that recovery of the
101 | part could interfere with the postmortem investigation
102 | into the decedent's cause or manner of death; requiring a
103 | medical examiner who intends to deny recovery to attend,
104 | if requested, the removal procedure for the part before
105 | making a final determination not to allow recovery of the
106 | part; requiring a medical examiner denying recovery to
107 | make specified recorded findings; requiring a procurement
108 | organization in certain circumstances, upon request, to
109 | provide the medical examiner with a records concerning a
110 | part assist in the postmortem examination; requiring a
111 | procurement organization to reimburse a medical examiner
112 | for additional costs incurred by the examiner who is

113 required to be present in certain circumstances; creating
 114 s. 765.5124, F.S.; providing for uniformity of application
 115 and construction of the revised act; creating s. 765.5125,
 116 F.S.; providing for relation of the revised act to the
 117 Electronic Signatures in Global and National Commerce Act;
 118 repealing s. 765.510, F.S., relating to a legislative
 119 declaration; repealing s. 765.511, F.S., relating to
 120 definitions; repealing s. 765.512, F.S., relating to
 121 persons who may make an anatomical gift; repealing s.
 122 765.513, F.S., relating to persons and entities that may
 123 become donees and purposes for which anatomical gifts may
 124 be made; repealing s. 765.514, F.S., relating to manner of
 125 making anatomical gifts; repealing s. 765.515, F.S.,
 126 relating to delivery of a donor document; repealing s.
 127 765.516, F.S., relating to amendment of the terms of or
 128 the revocation of the gift; repealing s. 765.517, F.S.,
 129 relating to rights and duties at death; amending ss.
 130 381.0041, 765.521, and 765.522, F.S.; revising cross-
 131 references to conform to changes made by the act;
 132 providing an effective date.

133
 134 Be It Enacted by the Legislature of the State of Florida:
 135
 136 Section 1. Section 765.5101, Florida Statutes, is created
 137 to read:
 138 765.5101 Short title.--Sections 765.5101-765.5125 may be
 139 cited as the "Revised Uniform Anatomical Gift Act."

140 Section 2. Section 765.5102, Florida Statutes, is created
141 to read:

142 765.5102 Definitions.--As used in ss. 765.5101-765.5125,
143 the term:

144 (1) "Adult" means an individual who is at least 18 years
145 of age.

146 (2) "Agent" means an individual who is:

147 (a) Authorized to make healthcare decisions on the
148 principal's behalf by a power of attorney for healthcare; or

149 (b) Expressly authorized to make an anatomical gift on the
150 principal's behalf by any other record signed by the principal.

151 (3) "Anatomical gift" means a donation of all or part of a
152 human body to take effect after the donor's death for the
153 purpose of transplantation, therapy, research, or education.

154 (4) "Decedent" means a deceased individual whose body or
155 part is or may be the source of an anatomical gift. The term
156 includes a stillborn infant and, subject to restrictions imposed
157 by law other than ss. 765.5101-765.5125, a fetus.

158 (5) "Disinterested witness" means a witness other than a
159 spouse, child, parent, sibling, grandchild, grandparent, or
160 guardian of the individual who makes, amends, revokes, or
161 refuses to make an anatomical gift, or another adult who
162 exhibited special care and concern for the individual. The term
163 does not include a person to whom an anatomical gift could pass
164 under s. 765.5111.

165 (6) "Document of gift" means a donor card or other record
166 used to make an anatomical gift and includes a statement or

167 symbol on a driver's license, identification card, or donor
168 registry.

169 (7) "Donor" means an individual whose body or part is the
170 subject of an anatomical gift.

171 (8) "Donor registry" means a database that contains
172 records of anatomical gifts and amendments to or revocations of
173 anatomical gifts.

174 (9) "Driver's license" means a license or permit issued by
175 the Department of Highway Safety and Motor Vehicles to operate a
176 vehicle, whether or not conditions are attached to the license
177 or permit.

178 (10) "Eye bank" means a person licensed, accredited, or
179 regulated under federal or state law to engage in the recovery,
180 screening, testing, processing, storage, or distribution of
181 human eyes or portions of human eyes.

182 (11) "Guardian" means a person appointed by a court to
183 make decisions regarding the support, care, education, health,
184 or welfare of an individual. The term does not include a
185 guardian ad litem.

186 (12) "Hospital" means a facility licensed as a hospital
187 under the law of any state or a facility operated as a hospital
188 by the United States, a state, or a subdivision of a state.

189 (13) "Identification card" means an identification card
190 issued by the Department of Highway Safety and Motor Vehicles.

191 (14) "Know" means to have actual knowledge.

192 (15) "Organ procurement organization" means a person
193 designated by the Secretary of the United States Department of
194 Health and Human Services as an organ procurement organization.

195 (16) "Parent" means a parent whose parental rights have
 196 not been terminated.

197 (17) "Part" means an organ, an eye, or tissue of a human
 198 being. The term does not include the whole body.

199 (18) "Person" means an individual, corporation, business
 200 trust, estate, trust, partnership, limited liability company,
 201 association, joint venture, public corporation, government or
 202 governmental subdivision, agency, or instrumentality or any
 203 other legal or commercial entity.

204 (19) "Physician" means an individual authorized to
 205 practice medicine or osteopathy under the law of any state.

206 (20) "Procurement organization" means an eye bank, organ
 207 procurement organization, or tissue bank.

208 (21) "Prospective donor" means an individual who is dead
 209 or near death and who has been determined by a procurement
 210 organization to have a part that could be medically suitable for
 211 transplantation, therapy, research, or education. The term does
 212 not include an individual who has made a refusal.

213 (22) "Reasonably available" means able to be contacted by
 214 a procurement organization without undue effort and willing and
 215 able to act in a timely manner consistent with existing medical
 216 criteria necessary for the making of an anatomical gift.

217 (23) "Recipient" means an individual into whose body a
 218 decedent's part has been or is intended to be transplanted.

219 (24) "Record" means information that is inscribed on a
 220 tangible medium or that is stored in an electronic or other
 221 medium and is retrievable in perceivable form.

222 (25) "Refusal" means a record created under s. 765.5107
 223 that expressly states an intent to bar other persons from making
 224 an anatomical gift of an individual's body or part.

225 (26) "Sign" means, with the present intent to authenticate
 226 or adopt a record:

227 (a) To execute or adopt a tangible symbol; or

228 (b) To attach to or logically associate with the record an
 229 electronic symbol, sound, or process.

230 (27) "State" means a state of the United States, the
 231 District of Columbia, Puerto Rico, the United States Virgin
 232 Islands, or any territory or insular possession subject to the
 233 jurisdiction of the United States.

234 (28) "Technician" means an individual determined to be
 235 qualified to remove or process parts by an appropriate
 236 organization that is licensed, accredited, or regulated under
 237 federal or state law. The term includes an enucleator.

238 (29) "Tissue" means a portion of the human body other than
 239 an organ or an eye. The term does not include blood unless the
 240 blood is donated for the purpose of research or education.

241 (30) "Tissue bank" means a person licensed, accredited, or
 242 regulated under federal or state law to engage in the recovery,
 243 screening, testing, processing, storage, or distribution of
 244 tissue.

245 (31) "Transplant hospital" means a hospital that furnishes
 246 organ transplants and other medical and surgical specialty
 247 services required for the care of transplant patients.

248 Section 3. Section 765.5103, Florida Statutes, is created
 249 to read:

250 765.5103 Applicability.--Sections 765.5101-765.5125 apply
 251 to an anatomical gift or amendment to, revocation of, or refusal
 252 to make an anatomical gift, whenever made.

253 Section 4. Section 765.5104, Florida Statutes, is created
 254 to read:

255 765.5104 Persons who may make an anatomical gift before
 256 the donor's death.--Subject to s. 765.5108, an anatomical gift
 257 of a donor's body or part may be made during the life of the
 258 donor for the purpose of transplantation, therapy, research, or
 259 education in the manner provided in s. 765.5105 by:

260 (1) The donor, if the donor is an adult or if the donor is
 261 a minor and is:

262 (a) Emancipated; or

263 (b) Authorized under state law to apply for a driver's
 264 license because the donor is at least 16 years of age.

265 (2) An agent of the donor, unless the power of attorney
 266 for healthcare or other record prohibits the agent from making
 267 an anatomical gift.

268 (3) A parent of the donor, if the donor is an
 269 unemancipated minor.

270 (4) The donor's guardian.

271 Section 5. Section 765.5105, Florida Statutes, is created
 272 to read:

273 765.5105 Manner of making an anatomical gift before the
 274 donor's death.--

275 (1) A donor may make an anatomical gift:

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276 (a) By authorizing a statement or symbol indicating that
277 the donor has made an anatomical gift to be imprinted on the
278 donor's driver's license or identification card;

279 (b) In a will;

280 (c) During a terminal illness or injury of the donor, by
281 any form of communication addressed to at least two adults, at
282 least one of whom is a disinterested witness; or

283 (d) As provided in subsection (2).

284 (2) A donor or other person authorized to make an
285 anatomical gift under s. 765.5104 may make a gift by a donor
286 card or other record signed by the donor or other person making
287 the gift or by authorizing that a statement or symbol indicating
288 that the donor has made an anatomical gift be included on a
289 donor registry. If the donor or other person is physically
290 unable to sign a record, the record may be signed by another
291 individual at the direction of the donor or other person and
292 must:

293 (a) Be witnessed by at least two adults, at least one of
294 whom is a disinterested witness, who have signed at the request
295 of the donor or the other person.

296 (b) State that it has been signed and witnessed as
297 provided in paragraph (a).

298 (3) Revocation, suspension, expiration, or cancellation of
299 a driver's license or identification card upon which an
300 anatomical gift is indicated does not invalidate the gift.

301 (4) An anatomical gift made by will takes effect upon the
302 donor's death whether or not the will is probated. Invalidation

303 of the will after the donor's death does not invalidate the
 304 gift.

305 Section 6. Section 765.5106, Florida Statutes, is created
 306 to read:

307 765.5106 Amending or revoking an anatomical gift before
 308 the donor's death.--

309 (1) Subject to s. 765.5108, a donor or other person
 310 authorized to make an anatomical gift under s. 765.5104 may
 311 amend or revoke an anatomical gift by:

312 (a) A record signed by:

313 1. The donor;

314 2. The other person; or

315 3. Subject to subsection (2), another individual acting at
 316 the direction of the donor or the other person if the donor or
 317 other person is physically unable to sign; or

318 (b) A later-executed document of gift that amends or
 319 revokes a previous anatomical gift or portion of an anatomical
 320 gift, either expressly or by inconsistency.

321 (2) A record signed pursuant to subparagraph (1)(a)3.
 322 must:

323 (a) Be witnessed by at least two adults, at least one of
 324 whom is a disinterested witness, who have signed at the request
 325 of the donor or the other person.

326 (b) State that it has been signed and witnessed as
 327 provided in paragraph (a).

328 (3) Subject to s. 765.5108, a donor or other person
 329 authorized to make an anatomical gift under s. 765.5104 may
 330 revoke an anatomical gift by the destruction or cancellation of

331 the document of gift, or the portion of the document of gift
 332 used to make the gift, with the intent to revoke the gift.

333 (4) A donor may amend or revoke an anatomical gift that
 334 was not made in a will by any form of communication during a
 335 terminal illness or injury addressed to at least two adults, at
 336 least one of whom is a disinterested witness.

337 (5) A donor who makes an anatomical gift in a will may
 338 amend or revoke the gift in the manner provided for amendment or
 339 revocation of wills or as provided in subsection (1).

340 Section 7. Section 765.5107, Florida Statutes, is created
 341 to read:

342 765.5107 Refusal to make an anatomical gift; effect of
 343 refusal.--

344 (1) An individual may refuse to make an anatomical gift of
 345 the individual's body or part by:

346 (a) A record signed by:

347 1. The individual; or

348 2. Subject to subsection (2), another individual acting at
 349 the direction of the individual if the individual is physically
 350 unable to sign;

351 (b) The individual's will, whether or not the will is
 352 admitted to probate or invalidated after the individual's death;
 353 or

354 (c) Any form of communication made by the individual
 355 during the individual's terminal illness or injury addressed to
 356 at least two adults, at least one of whom is a disinterested
 357 witness.

358 | (2) A record signed pursuant to subparagraph (1)(a)2.

359 | must:

360 | (a) Be witnessed by at least two adults, at least one of
 361 | whom is a disinterested witness, who have signed at the request
 362 | of the individual.

363 | (b) State that it has been signed and witnessed as
 364 | provided in paragraph (a).

365 | (3) An individual who has made a refusal may amend or
 366 | revoke the refusal:

367 | (a) In the manner provided in subsection (1) for making a
 368 | refusal;

369 | (b) By subsequently making an anatomical gift pursuant to
 370 | s. 765.5105 that is inconsistent with the refusal; or

371 | (c) By destroying or canceling the record evidencing the
 372 | refusal, or the portion of the record used to make the refusal,
 373 | with the intent to revoke the refusal.

374 | (4) Except as otherwise provided in s. 765.5108(8), in the
 375 | absence of an express, contrary indication by the individual set
 376 | forth in the refusal, an individual's unrevoked refusal to make
 377 | an anatomical gift of the individual's body or part bars all
 378 | other persons from making an anatomical gift of the individual's
 379 | body or part.

380 | Section 8. Section 765.5108, Florida Statutes, is created
 381 | to read:

382 | 765.5108 Preclusive effect of an anatomical gift,
 383 | amendment, or revocation.--

384 | (1) Except as otherwise provided in subsection (7) and
 385 | subject to subsection (6), in the absence of an express,

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386 contrary indication by the donor, a person other than the donor
387 is barred from making, amending, or revoking an anatomical gift
388 of a donor's body or part if the donor made an anatomical gift
389 of the donor's body or part under s. 765.5105 or an amendment to
390 an anatomical gift of the donor's body or part under s.
391 765.5106.

392 (2) A donor's revocation of an anatomical gift of the
393 donor's body or part under s. 765.5106 is not a refusal and does
394 not bar another person specified in s. 765.5104 or s. 765.5109
395 from making an anatomical gift of the donor's body or part under
396 s. 765.5105 or s. 765.5110.

397 (3) If a person other than the donor makes an unrevoked
398 anatomical gift of the donor's body or part under s. 765.5105 or
399 an amendment to an anatomical gift of the donor's body or part
400 under s. 765.5106, another person may not make, amend, or revoke
401 the gift of the donor's body or part under s. 765.5110.

402 (4) A revocation of an anatomical gift of a donor's body
403 or part under s. 765.5106 by a person other than the donor does
404 not bar another person from making an anatomical gift of the
405 body or part under s. 765.5105 or s. 765.5110.

406 (5) In the absence of an express, contrary indication by
407 the donor or other person authorized to make an anatomical gift
408 under s. 765.5104, an anatomical gift of a part is neither a
409 refusal to give another part nor a limitation on the making of
410 an anatomical gift of another part at a later time by the donor
411 or another person.

412 (6) In the absence of an express, contrary indication by
413 the donor or other person authorized to make an anatomical gift

414 under s. 765.5104, an anatomical gift of a part for one or more
415 of the purposes set forth in s. 765.5104 is not a limitation on
416 the making of an anatomical gift of the part for any of the
417 other purposes by the donor or any other person under s.
418 765.5105 or s. 765.5110.

419 (7) If a donor who is an unemancipated minor dies, a
420 parent of the donor who is reasonably available may revoke or
421 amend an anatomical gift of the donor's body or part.

422 (8) If an unemancipated minor who signed a refusal dies, a
423 parent of the minor who is reasonably available may revoke the
424 minor's refusal.

425 Section 9. Section 765.5109, Florida Statutes, is created
426 to read:

427 765.5109 Who may make an anatomical gift of a decedent's
428 body or part.--

429 (1) Subject to subsections (2) and (3) and unless barred
430 by s. 765.5107 or s. 765.5108, an anatomical gift of a
431 decedent's body or part for purpose of transplantation, therapy,
432 research, or education may be made by any member of the
433 following classes of persons who is reasonably available, in the
434 order of priority listed:

435 (a) An agent of the decedent at the time of death who
436 could have made an anatomical gift under s. 765.5104(2)
437 immediately before the decedent's death.

438 (b) The spouse of the decedent.

439 (c) Adult children of the decedent.

440 (d) Parents of the decedent.

441 (e) Adult siblings of the decedent.

442 (f) Adult grandchildren of the decedent.
 443 (g) Grandparents of the decedent.
 444 (h) An adult who exhibited special care and concern for
 445 the decedent.
 446 (i) The persons who were acting as the guardians of the
 447 person of the decedent at the time of death.
 448 (j) Any other person having the authority to dispose of
 449 the decedent's body.
 450 (2) If there is more than one member of a class listed in
 451 paragraphs (1)(a), (c), (d), (e), (f), (g), or (i) who is
 452 entitled to make an anatomical gift, an anatomical gift may be
 453 made by a member of the class unless that member or a person to
 454 whom the gift may pass under s. 765.5111 knows of an objection
 455 by another member of the class. If an objection is known, the
 456 gift may be made only by a majority of the members of the class
 457 who are reasonably available.
 458 (3) A person may not make an anatomical gift if, at the
 459 time of the decedent's death, a person in a prior class under
 460 subsection (1) is reasonably available to make or to object to
 461 the making of an anatomical gift.
 462 (4) A health care surrogate designated by the decedent
 463 pursuant to part II of this chapter may give all or any part of
 464 the decedent's body for any purpose specified in s. 765.5111
 465 absent actual notice of contrary indications by the decedent.
 466 Section 10. Section 765.5110, Florida Statutes, is created
 467 to read:
 468 765.5110 Manner of making, amending, or revoking an
 469 anatomical gift of a decedent's body or part.--

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470 (1) A person authorized to make an anatomical gift under
471 s. 765.5109 may make an anatomical gift by a document of gift
472 signed by the person making the gift or by that person's oral
473 communication that is electronically recorded or is
474 contemporaneously reduced to a record and signed by the
475 individual receiving the oral communication.

476 (2) Subject to subsection (3), an anatomical gift by a
477 person authorized under s. 765.5109 may be amended or revoked
478 orally or in a record by any member of a prior class who is
479 reasonably available. If more than one member of the prior class
480 is reasonably available, the gift made by a person authorized
481 under s. 765.5109 may be:

482 (a) Amended only if a majority of the reasonably available
483 members agree to the amending of the gift; or

484 (b) Revoked only if a majority of the reasonably available
485 members agree to the revoking of the gift or if they are equally
486 divided as to whether to revoke the gift.

487 (3) A revocation under subsection (2) is effective only
488 if, before an incision has been made to remove a part from the
489 donor's body or before invasive procedures have begun to prepare
490 the recipient, the procurement organization, transplant
491 hospital, or physician or technician knows of the revocation.

492 Section 11. Section 765.5111, Florida Statutes, is created
493 to read:

494 765.5111 Persons who may receive an anatomical gift;
495 purpose of an anatomical gift.--

496 (1) An anatomical gift may be made to the following
497 persons named in the document of gift:

498 (a) A hospital; an accredited medical school, dental
499 school, college, or university; an organ procurement
500 organization; or other appropriate person, for research or
501 education.

502 (b) Subject to subsection (2), an individual designated by
503 the person making the anatomical gift if the individual is the
504 recipient of the part.

505 (c) An eye bank or tissue bank.

506 (2) If an anatomical gift to an individual under paragraph
507 (1)(b) cannot be transplanted into that individual, the part
508 passes in accordance with subsection (7) in the absence of an
509 express, contrary indication by the person making the anatomical
510 gift.

511 (3) If an anatomical gift of one or more specific parts or
512 all parts is made in a document of gift that does not name a
513 person described in subsection (1) but identifies the purpose
514 for which an anatomical gift may be used, the following rules
515 apply:

516 (a) If the part is an eye and the gift is for the purpose
517 of transplantation or therapy, the gift passes to the
518 appropriate eye bank.

519 (b) If the part is tissue and the gift is for the purpose
520 of transplantation or therapy, the gift passes to the
521 appropriate tissue bank.

522 (c) If the part is an organ and the gift is for the
523 purpose of transplantation or therapy, the gift passes to the
524 appropriate organ procurement organization as custodian of the
525 organ.

526 (d) If the part is an organ, an eye, or tissue and the
527 gift is for the purpose of research or education, the gift
528 passes to the appropriate procurement organization.

529 (4) For the purpose of subsection (3), if there is more
530 than one purpose of an anatomical gift set forth in the document
531 of gift but the purposes are not set forth in any priority, the
532 gift must be used for transplantation or therapy, if suitable.
533 If the gift cannot be used for transplantation or therapy, the
534 gift may be used for research or education.

535 (5) If an anatomical gift of one or more specific parts is
536 made in a document of gift that does not name a person described
537 in subsection (1) and does not identify the purpose of the gift,
538 the gift may be used only for transplantation or therapy, and
539 the gift passes in accordance with subsection (7).

540 (6) If a document of gift specifies only a general intent
541 to make an anatomical gift by words such as "donor," "organ
542 donor," or "body donor," or by a symbol or statement of similar
543 import, the gift may be used only for transplantation or
544 therapy, and the gift passes in accordance with subsection (7).

545 (7) For purposes of subsections (2), (5), and (6), the
546 following rules apply:

547 (a) If the part is an eye, the gift passes to the
548 appropriate eye bank.

549 (b) If the part is tissue, the gift passes to the
550 appropriate tissue bank.

551 (c) If the part is an organ, the gift passes to the
552 appropriate organ procurement organization as custodian of the
553 organ.

554 (8) An anatomical gift of an organ for transplantation or
555 therapy, other than an anatomical gift under paragraph (1)(b),
556 passes to the organ procurement organization as custodian of the
557 organ.

558 (9) If an anatomical gift does not pass pursuant to
559 subsections (1)-(8) or the decedent's body or part is not used
560 for transplantation, therapy, research, or education, custody of
561 the body or part passes to the person under obligation to
562 dispose of the body or part.

563 (10) A person may not accept an anatomical gift if the
564 person knows that the gift was not effectively made under s.
565 765.5105 or s. 765.5110 or if the person knows that the decedent
566 made a refusal under s. 765.5107 that was not revoked. For
567 purposes of the subsection, if a person knows that an anatomical
568 gift was made on a document of gift, the person is deemed to
569 know of any amendment or revocation of the gift or any refusal
570 to make an anatomical gift on the same document of gift.

571 (11) Except as otherwise provided in paragraph (1)(b),
572 nothing in ss. 765.5101-765.5125 affects the allocation of
573 organs for transplantation or therapy.

574 Section 12. Section 765.5112, Florida Statutes, is created
575 to read:

576 765.5112 Search and notification.--

577 (1) The following persons shall make a reasonable search
578 of an individual who the person reasonably believes to be dead
579 or near death for a document of gift or other information
580 identifying the individual as a donor or as an individual who
581 made a refusal:

582 (a) A law enforcement officer, firefighter, paramedic, or
 583 other emergency rescuer finding the individual.

584 (b) If no other source of the information is immediately
 585 available, a hospital, as soon as practical after the
 586 individual's arrival at the hospital.

587 (2) If a document of gift or a refusal to make an
 588 anatomical gift is located by the search required by paragraph
 589 (1)(a) and the individual or deceased individual to whom it
 590 relates is taken to a hospital, the person responsible for
 591 conducting the search shall send the document of gift or refusal
 592 to the hospital.

593 (3) A person is not subject to criminal or civil liability
 594 for failing to discharge the duties imposed by this section but
 595 may be subject to administrative sanctions.

596 Section 13. Section 765.5113, Florida Statutes, is created
 597 to read:

598 765.5113 Delivery of a document of gift not required;
 599 right to examine.--

600 (1) A document of gift need not be delivered during the
 601 donor's lifetime to be effective.

602 (2) Upon or after an individual's death, a person in
 603 possession of a document of gift or a refusal to make an
 604 anatomical gift with respect to the individual shall allow
 605 examination and copying of the document of gift or refusal by a
 606 person authorized to make or object to the making of an
 607 anatomical gift with respect to the individual or by a person to
 608 whom the gift could pass under s. 765.5111.

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609 Section 14. Section 765.5114, Florida Statutes, is created
610 to read:

611 765.5114 Rights and duties of procurement organizations
612 and others.--

613 (1) When a hospital refers an individual at or near death
614 to a procurement organization, the organization shall make a
615 reasonable search of the records of the statewide organ and
616 tissue donor registry and any donor registry that the
617 organization knows exists for the geographical area in which the
618 individual resides to ascertain whether the individual has made
619 an anatomical gift.

620 (2) A procurement organization must be allowed reasonable
621 access to information in the records of the statewide organ and
622 tissue donor registry to ascertain whether an individual at or
623 near death is a donor.

624 (3) When a hospital refers an individual at or near death
625 to a procurement organization, the organization may conduct any
626 reasonable examination necessary to ensure the medical
627 suitability of a part that is or could be the subject of an
628 anatomical gift for transplantation, therapy, research, or
629 education from a donor or a prospective donor. During the
630 examination period, measures necessary to ensure the medical
631 suitability of the part may not be withdrawn unless the hospital
632 or procurement organization knows that the individual expressed
633 a contrary intent.

634 (4) Unless prohibited by law other than ss. 765.5101-
635 765.5125, at any time after a donor's death, the person to whom
636 a part passes under s. 765.5111 may conduct any reasonable

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637 examination necessary to ensure the medical suitability of the
638 body or part for its intended purpose.

639 (5) Unless prohibited by law other than ss. 765.5101-
640 765.5125, an examination under subsection (3) or subsection (4)
641 may include an examination of all medical and dental records of
642 the donor or prospective donor.

643 (6) Upon the death of a minor who was a donor or had
644 signed a refusal, unless a procurement organization knows the
645 minor is emancipated, the procurement organization shall conduct
646 a reasonable search for the parents of the minor and provide the
647 parents with an opportunity to revoke or amend the anatomical
648 gift or revoke the refusal.

649 (7) Upon referral by a hospital under subsection (1), a
650 procurement organization shall make a reasonable search for any
651 person listed in s. 765.5109 having priority to make an
652 anatomical gift on behalf of a prospective donor. If a
653 procurement organization receives information that an anatomical
654 gift to any other person was made, amended, or revoked, it shall
655 promptly advise the other person of all relevant information.

656 (8) Subject to s. 765.5111(9) and s. 765.5123, the rights
657 of the person to whom a part passes under s. 765.5111 are
658 superior to the rights of all others with respect to the part.
659 The person may accept or reject an anatomical gift in whole or
660 in part. Subject to the terms of the document of gift and ss.
661 765.5101-765.5125, a person who accepts an anatomical gift of an
662 entire body may allow embalming, burial, or cremation, and use
663 of remains in a funeral service. If the gift is of a part, the
664 person to whom the part passes under s. 765.5111, upon the death

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665 of the donor and before embalming, burial, or cremation, shall
666 cause the part to be removed without unnecessary mutilation.

667 (9) Neither the physician who attends the decedent at
668 death nor the physician who determines the time of the
669 decedent's death may participate in the procedures for removing
670 or transplanting a part from the decedent.

671 (10) A physician or technician may remove a donated part
672 from the body of a donor that the physician or technician is
673 qualified to remove.

674 Section 15. Section 765.5115, Florida Statutes, is created
675 to read:

676 765.5115 Coordination of procurement and use.--Each
677 hospital in this state shall enter into agreements or
678 affiliations with procurement organizations for coordination of
679 procurement and use of anatomical gifts.

680 Section 16. Section 765.5117, Florida Statutes, is created
681 to read:

682 765.5117 Prohibited acts.--A person who, in order to
683 obtain financial gain, intentionally falsifies, forges,
684 conceals, defaces, or obliterates a document of gift, an
685 amendment or revocation of a document of gift, or a refusal
686 commits a felony of the third degree, punishable as provided in
687 s. 775.082, s. 775.083, or s. 775.084.

688 Section 17. Section 765.5118, Florida Statutes, is created
689 to read:

690 765.5118 Immunity.--

691 (1) A person who acts in accordance with ss. 765.5101-
692 765.5125 or with the applicable anatomical gift law of another

693 state, or attempts in good faith to do so, is not liable for
 694 such an act in a civil action, criminal prosecution, or
 695 administrative proceeding.

696 (2) Neither the person making an anatomical gift nor the
 697 donor's estate is liable for any injury or damage that results
 698 from the making or use of the gift.

699 (3) In determining whether an anatomical gift has been
 700 made, amended, or revoked under ss. 765.5101-765.5125, a person
 701 may rely upon representations of an individual listed in s.
 702 765.5109(1)(b), (c), (d), (e), (f), (g), or (h) relating to the
 703 individual's relationship to the donor or prospective donor
 704 unless the person knows that the representation is untrue.

705 Section 18. Section 765.5119, Florida Statutes, is created
 706 to read:

707 765.5119 Law governing validity; choice of law as to
 708 execution of a document of gift; presumption of validity.--

709 (1) A document of gift is valid if executed in accordance
 710 with:

711 (a) Sections 765.5101-765.5125;

712 (b) The laws of the state or country where it was
 713 executed; or

714 (c) The laws of the state or country where the person
 715 making the anatomical gift was domiciled, has a place of
 716 residence, or was a national at the time the document of gift
 717 was executed.

718 (2) If a document of gift is valid under this section, the
 719 law of this state governs the interpretation of the document of
 720 gift.

721 (3) A person may presume that a document of gift or
 722 amendment of an anatomical gift is valid unless that person
 723 knows that it was not validly executed or was revoked.

724 Section 19. Section 765.5155, Florida Statutes, is
 725 transferred and renumbered as s. 765.5120, Florida Statutes.

726 Section 20. Section 765.51551, Florida Statutes, is
 727 transferred and renumbered as 765.51201, Florida Statutes.

728 Section 21. Section 765.5121, Florida Statutes, is created
 729 to read:

730 765.5121 Effect of an anatomical gift on an advance
 731 healthcare directive.--

732 (1) As used in this section, the term:

733 (a) "Advance healthcare directive" means a power of
 734 attorney for healthcare or a record signed or authorized by a
 735 prospective donor containing the prospective donor's direction
 736 concerning a healthcare decision for the prospective donor.

737 (b) "Declaration" means a record signed by a prospective
 738 donor specifying the circumstances under which life support
 739 services may be withheld or withdrawn from the prospective
 740 donor.

741 (c) "Healthcare decision" means any decision regarding the
 742 health care of the prospective donor.

743 (2) If a prospective donor has a declaration or advance
 744 healthcare directive and the terms of the declaration or
 745 directive and the express or implied terms of a potential
 746 anatomical gift are in conflict with regard to the
 747 administration of measures necessary to ensure the medical
 748 suitability of a part for transplantation or therapy, the

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749 prospective donor's attending physician and prospective donor
750 shall confer to resolve the conflict. If the prospective donor
751 is incapable of resolving the conflict, an agent acting under
752 the prospective donor's declaration or directive, or, if none or
753 the agent is not reasonably available, another person authorized
754 by law other than ss. 765.5101-765.5125 to make healthcare
755 decisions on behalf of the prospective donor, shall act for the
756 donor to resolve the conflict. The conflict must be resolved as
757 expeditiously as possible. Information relevant to the
758 resolution of the conflict may be obtained from the appropriate
759 procurement organization and any other person authorized to make
760 an anatomical gift for the prospective donor under s. 765.5109.
761 Before resolution of the conflict, measures necessary to ensure
762 the medical suitability of the part may not be withheld or
763 withdrawn from the prospective donor if withholding or
764 withdrawing the measures is not contraindicated by appropriate
765 end-of-life care.

766 Section 22. Section 765.5122, Florida Statutes, is created
767 to read:

768 765.5122 Cooperation between medical examiners and
769 procurement organizations.--

770 (1) A medical examiner shall cooperate with procurement
771 organizations to maximize the opportunity to recover anatomical
772 gifts for the purpose of transplantation, therapy, research, or
773 education.

774 (2) If a medical examiner receives notice from a
775 procurement organization that an anatomical gift might be
776 available or was made with respect to a decedent whose body is

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777 under the jurisdiction of the medical examiner and a postmortem
778 examination is going to be performed, unless the medical
779 examiner denies recovery in accordance with s. 765.5123, the
780 medical examiner or designee shall conduct a postmortem
781 examination of the body or the part in a manner and within a
782 period compatible with its preservation for the purposes of the
783 gift.

784 (3) A part may not be removed from the body of a decedent
785 under the jurisdiction of a medical examiner for
786 transplantation, therapy, research, or education unless the part
787 is the subject of an anatomical gift. The body of a decedent
788 under the jurisdiction of the medical examiner may not be
789 delivered to a person for research or education unless the body
790 is the subject of an anatomical gift. This subsection does not
791 preclude a medical examiner from performing the medicolegal
792 investigation upon the body or parts of a decedent under the
793 jurisdiction of the medical examiner.

794 Section 23. Section 765.5123, Florida Statutes, is created
795 to read:

796 765.5123 Facilitation of an anatomical gift from a
797 decedent whose body is under the jurisdiction of a medical
798 examiner.--

799 (1) Upon request of a procurement organization, a medical
800 examiner shall release to the procurement organization the name,
801 contact information, and available medical and social history of
802 a decedent whose body is under the jurisdiction of the medical
803 examiner. If the decedent's body or part is medically suitable
804 for transplantation, therapy, research, or education, the

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805 medical examiner shall release postmortem examination results to
806 the procurement organization. The procurement organization may
807 make a subsequent disclosure of the postmortem examination
808 results or other information received from the medical examiner
809 only if relevant to transplantation or therapy.

810 (2) The medical examiner may conduct a medicolegal
811 examination by reviewing all medical records, laboratory test
812 results, X rays, other diagnostic results, and other information
813 that any person possesses about a donor or prospective donor
814 whose body is under the jurisdiction of the medical examiner
815 which the medical examiner determines may be relevant to the
816 investigation.

817 (3) A person who has any information requested by a
818 medical examiner pursuant to subsection (2) shall provide that
819 information as expeditiously as possible to allow the medical
820 examiner to conduct the medicolegal investigation within a
821 period compatible with the preservation of parts for the purpose
822 of transplantation, therapy, research, or education.

823 (4) If an anatomical gift has been or might be made of a
824 part of a decedent whose body is under the jurisdiction of the
825 medical examiner and a postmortem examination is not required,
826 or the medical examiner determines that a postmortem examination
827 is required but that the recovery of the part that is the
828 subject of an anatomical gift will not interfere with the
829 examination, the medical examiner and procurement organization
830 shall cooperate in the timely removal of the part from the
831 decedent for the purpose of transplantation, therapy, research,
832 or education.

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833 (5) If an anatomical gift of a part from the decedent
834 under the jurisdiction of the medical examiner has been or might
835 be made, but the medical examiner initially believes that the
836 recovery of the part could interfere with the postmortem
837 investigation into the decedent's cause or manner of death, the
838 medical examiner shall consult with the procurement organization
839 or physician or technician designated by the procurement
840 organization about the proposed recovery. After consultation,
841 the medical examiner may allow the recovery.

842 (6) After the consultation under subsection (5), in the
843 absence of mutually agreed-upon protocols to resolve conflict
844 between the medical examiner and the procurement organization,
845 if the medical examiner intends to deny recovery, the medical
846 examiner or designee, at the request of the procurement
847 organization, shall attend the removal procedure for the part
848 before making a final determination not to allow the procurement
849 organization to recover the part. During the removal procedure,
850 the medical examiner or designee may allow recovery by the
851 procurement organization to proceed or, if the medical examiner
852 or designee reasonably believes that the part may be involved in
853 determining the decedent's cause or manner of death, may deny
854 recovery by the procurement organization.

855 (7) If the medical examiner or designee denies recovery
856 under subsection (6), the medical examiner or designee shall:

857 (a) Explain in a record the specific reasons for not
858 allowing recovery of the part.

859 (b) Include the specific reasons in the records of the
860 medical examiner.

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861 (c) Provide a record with the specific reasons to the
862 procurement organization.

863 (8) If the medical examiner or designee allows recovery of
864 a part under subsection (4), subsection (5), or subsection (6),
865 the procurement organization shall, upon request, cause the
866 physician or technician who removes the part to provide the
867 medical examiner with a record describing the condition of the
868 part, a biopsy, a photograph, and any other information and
869 observations that would assist in the postmortem examination.

870 (9) If a medical examiner or designee is required to be
871 present at a removal procedure under subsection (6), upon
872 request the procurement organization requesting the recovery of
873 the part shall reimburse the medical examiner or designee for
874 the additional costs incurred in complying with subsection (6).

875 Section 24. Section 765.5124, Florida Statutes, is created
876 to read:

877 765.5124 Uniformity of application and construction.--In
878 applying and construing this uniform act, consideration must be
879 given to the need to promote uniformity of the law with respect
880 to its subject matter among states that enact it.

881 Section 25. Section 765.5125, Florida Statutes, is created
882 to read:

883 765.5125 Relation to Electronic Signatures in Global and
884 National Commerce Act.--Sections 765.5101-765.5125 modify,
885 limit, and supersede the Electronic Signatures in Global and
886 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but do not
887 modify, limit, or supersede s. 101(a) of that act, 15 U.S.C. s.

888 7001, or authorize electronic delivery of any of the notices
 889 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

890 Section 26. Sections 765.510, 765.511, 765.512, 765.513,
 891 765.514, 765.515, 765.516, and 765.517, Florida Statutes, are
 892 repealed.

893 Section 27. Paragraph (c) of subsection (2) of section
 894 381.0041, Florida Statutes, is amended to read:

895 381.0041 Donation and transfer of human tissue; testing
 896 requirements.--

897 (2) Notwithstanding the provisions of subsection (1),
 898 written, informed consent to perform testing shall not be
 899 required:

900 (c) When an unrevoked anatomical gift has been made
 901 pursuant to s. 765.5105 ~~765.514~~, by will or other written
 902 instrument, and the donor is deceased or incompetent.

903 Section 28. Subsection (1) of section 765.521, Florida
 904 Statutes, is amended to read:

905 765.521 Donations as part of driver license or
 906 identification card process.--

907 (1) The Agency for Health Care Administration and the
 908 Department of Highway Safety and Motor Vehicles shall develop
 909 and implement a program encouraging and allowing persons to make
 910 anatomical gifts as a part of the process of issuing
 911 identification cards and issuing and renewing driver licenses.
 912 ~~The donor registration card distributed by the Department of~~
 913 ~~Highway Safety and Motor Vehicles shall include the information~~
 914 ~~required by the uniform donor card under s. 765.5105(1)(a)~~
 915 ~~765.514 and such additional information as determined necessary~~

916 ~~by the department.~~ The department shall also develop and
 917 implement a program to identify donors, which includes notations
 918 on identification cards, driver licenses, and driver records or
 919 such other methods as the department develops to clearly
 920 indicate the individual's intent to donate the individual's
 921 organs, tissues, or eyes. A notation on an individual's driver
 922 license or identification card that the individual intends to
 923 donate organs, tissues, or eyes satisfies all requirements for
 924 consent to organ or tissue donation. The Agency for Health Care
 925 Administration shall provide the necessary supplies and forms
 926 from funds appropriated from general revenue or contributions
 927 from interested voluntary, nonprofit organizations. The
 928 department shall provide the necessary recordkeeping system from
 929 funds appropriated from general revenue. The Department of
 930 Highway Safety and Motor Vehicles and the Agency for Health Care
 931 Administration shall incur no liability in connection with the
 932 performance of any acts authorized herein.

933 Section 29. Subsections (2) and (3) of section 765.522,
 934 Florida Statutes, are amended to read:

935 765.522 Duty of certain hospital administrators; liability
 936 of hospital administrators, organ procurement organizations, eye
 937 banks, and tissue banks.--

938 (2) Where, based on accepted medical standards, a hospital
 939 patient is a suitable candidate for organ or tissue donation,
 940 the hospital administrator or the hospital administrator's
 941 designee shall, at or near the time of death, notify the
 942 appropriate organ, eye, or tissue recovery program, which shall
 943 access the organ and tissue donor registry created by s.

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944 765.5120 ~~765.5155~~ to ascertain the existence of an entry in the
945 registry that has not been revoked, a donor card, or a document
946 executed by the decedent. In the absence of an entry in the
947 donor registry, donor card, organ donation sticker or organ
948 donation imprint on a driver's license, or other properly
949 executed document, the organ, eye, or tissue recovery program
950 shall request:

951 (a) The patient's health care surrogate, as authorized in
952 s. 765.5109(4) ~~765.512(2)~~; or

953 (b) If the patient does not have a surrogate, or the
954 surrogate is not reasonably available, any of the persons
955 specified in s. 765.5109(1) ~~765.512(3)~~, in the order and manner
956 listed,

957
958 to consent to the gift of all or any part of the decedent's body
959 for any purpose specified in this part. Except as provided in s.
960 765.5109 ~~765.512~~, in the absence of actual notice of opposition,
961 consent need only be obtained from the person or persons in the
962 highest priority class reasonably available.

963 (3) A gift made pursuant to a request required by this
964 section shall be executed pursuant to s. 765.5110 ~~765.514~~.

965 Section 30. This act shall take effect October 1, 2009.