

1                   A bill to be entitled  
2           An act relating to anatomical gifts; amending s. 765.511,  
3           F.S.; providing additional definitions; amending s.  
4           765.512, F.S.; conforming terms; amending s. 765.513,  
5           F.S.; revising the list of donees that may accept  
6           anatomical gifts and the purposes for which such gifts may  
7           be used; amending ss. 765.514, 765.515, 765.5155, and  
8           765.51551, F.S.; conforming terms; amending s. 765.516,  
9           F.S.; revising provisions relating to a donor's amendment  
10          or revocation of an anatomical gift; amending s. 765.517,  
11          F.S.; revising provisions relating to a donee's use of an  
12          anatomical gift at the time of the donor's death;  
13          providing liability protection for the person making a  
14          gift and for the donor's estate; amending s. 765.521,  
15          F.S.; conforming terms; amending s. 765.522, F.S.;  
16          providing that the laws of this state govern the  
17          interpretation of a valid document of gift and that a  
18          document of gift is presumed to be valid; amending ss.  
19          765.53, 765.541, 765.542, 765.543, 765.544, and 765.545,  
20          F.S.; conforming terms; creating s. 765.547, F.S.;  
21          requiring medical examiners and procurement organizations  
22          to cooperate and maximize opportunities for organ  
23          donations; authorizing the Florida Medical Examiners  
24          Commission to adopt rules; amending ss. 408.802 and  
25          408.820, F.S.; conforming terms; providing an effective  
26          date.

27  
28   Be It Enacted by the Legislature of the State of Florida:

29  
 30 Section 1. Section 765.511, Florida Statutes, is amended  
 31 to read:

32 765.511 Definitions.--As used in this part, the term:

33 (1) "Agency" means the Agency for Health Care  
 34 Administration.

35 (2) "Anatomical gift" or "gift" means a donation of all or  
 36 part of a human body to take effect after the donor's death and  
 37 to be used for transplantation, therapy, research, or education.

38 (3)~~(1)~~ "Bank" or "storage facility" means a facility  
 39 licensed, accredited, or approved under the laws of any state  
 40 for storage of human bodies or body parts thereof.

41 (4)~~(2)~~ "Death" means the absence of life as determined, in  
 42 accordance with currently accepted medical standards, by the  
 43 irreversible cessation of all respiration and circulatory  
 44 function, or as determined, in accordance with s. 382.009, by  
 45 the irreversible cessation of the functions of the entire brain,  
 46 including the brain stem.

47 (5) "Decedent" means a deceased individual whose body or  
 48 body parts may be, or are, the source of an anatomical gift.

49 (6) "Department" means the Department of Highway Safety  
 50 and Motor Vehicles.

51 (7) "Disinterested witness" means a witness other than a  
 52 person listed in s. 765.512(3) or other family member.

53 (8) "Document of gift" means any of the documents or  
 54 mechanisms used in making an anatomical gift under s. 765.514.

55 (9)~~(3)~~ "Donor" means an individual who makes an anatomical  
 56 a gift of all or part of his or her body.

57        (10) "Donor registry" means a database that contains  
58 records of anatomical gifts and amendments to, or revocations  
59 of, such gifts.

60        (11) "Eye bank" means an entity that is accredited by the  
61 Eye Bank Association of America or otherwise regulated under  
62 federal or state law to engage in the retrieval, screening,  
63 testing, processing, storage, or distribution of human eye  
64 tissue.

65        (12) "Guardian" means a person appointed pursuant to  
66 chapter 744. The term does not include a guardian ad litem.

67        (13)~~(4)~~ "Hospital" means a hospital licensed, accredited,  
68 or approved under the laws of any state and includes a hospital  
69 operated by the United States Government or a state, or a  
70 subdivision thereof, although not required to be licensed under  
71 state laws.

72        (14) "Identification card" means an official  
73 identification card issued by a governmental entity, state  
74 agency, or subdivision thereof.

75        (15) "Organ procurement organization" means an entity that  
76 is designated as an organ procurement organization by the  
77 Secretary of the United States Department of Health and Human  
78 Services and that engages in the retrieval, screening, testing,  
79 processing, storage, or distribution of human organs.

80        (16) "Part of the body" or "body part" means an organ,  
81 eye, or tissue of a human being. The term does not include the  
82 whole body.

83        (17)~~(5)~~ "Physician" or "surgeon" means a physician or  
84 surgeon licensed to practice under chapter 458 or chapter 459 or

85 similar laws of any state. "Surgeon" includes dental or oral  
86 surgeon.

87 (18) "Procurement" means any retrieval, recovery,  
88 processing, storage, or distribution of human organs or tissues  
89 for transplantation, therapy, research, or education.

90 (19) "Procurement organization" means an organ procurement  
91 organization, eye bank, or tissue bank.

92 (20) "Reasonably available" means able to be contacted by  
93 a procurement organization in a timely manner without undue  
94 effort, and willing and able to act in a manner consistent with  
95 existing medical protocols necessary for the making of an  
96 anatomical gift.

97 (21) "Record" means information that is inscribed on a  
98 tangible medium or that is stored in an electronic or other  
99 medium and is retrievable in perceivable form.

100 (22) "Sign" or "signed" means, with the present intent to  
101 authenticate or adopt a record, to execute or adopt a tangible  
102 symbol, or attach to or logically associate an electronic  
103 symbol, sound, or process with the record.

104 (23) "Tissue bank" means an entity that is accredited by  
105 the American Association of Tissue Banks or otherwise regulated  
106 under federal or state law to engage in the retrieval,  
107 screening, testing, processing, storage, or distribution of  
108 human tissue.

109 Section 2. Subsections (1), (4), (5), (6), and (7) of  
110 section 765.512, Florida Statutes, are amended to read:

111 765.512 Persons who may make an anatomical gift.--

112 (1) Any person who may make a will may make an anatomical

113 ~~gift give all or part of his or her body for any purpose~~  
114 ~~specified in s. 765.513. The gift is effective upon the death of~~  
115 ~~the donor.~~

116 (a) If the decedent makes an anatomical gift by one of the  
117 methods listed in s. 765.514(1), and in the absence of actual  
118 notice of contrary indications by the decedent, the document or  
119 entry in the donor ~~organ and tissue~~ registry is legally  
120 sufficient evidence of the decedent's informed consent to donate  
121 an anatomical gift.

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

128 (4) A donee may not accept an anatomical gift if the donee  
129 has actual notice of contrary indications by the donor or actual  
130 notice that an anatomical ~~a~~ gift by a member of a class is  
131 opposed by a member of a prior class.

132 (5) The person authorized by subsection (3) may make the  
133 anatomical gift after the decedent's death or immediately before  
134 the decedent's death.

135 (6) An anatomical ~~A gift of all or part of a body~~  
136 authorizes:

137 (a) Any examination necessary to assure medical  
138 acceptability of the gift for the purposes intended.

139 (b) The decedent's medical provider, family, or a third  
140 party to furnish medical records requested concerning the

141 decedent's medical and social history.

142 (7) Once the anatomical gift has been made, the rights of  
 143 the donee are paramount to the rights of others, except as  
 144 provided by s. 765.517.

145 Section 3. Section 765.513, Florida Statutes, is amended  
 146 to read:

147 765.513 ~~Persons and entities that may become~~ Donees;  
 148 purposes for which anatomical gifts may be made.--

149 (1) The following persons or entities may become donees of  
 150 anatomical gifts of bodies or parts of them for the purposes  
 151 stated:

152 (a) ~~(1)~~ Any procurement organization or accredited  
 153 ~~hospital, surgeon, or physician for~~ medical or dental school,  
 154 college, or university for education, ~~or~~ research, advancement  
 155 ~~of medical or dental science,~~ therapy, or transplantation.

156 (2) ~~Any accredited medical or dental school, college, or~~  
 157 ~~university for education, research, advancement of medical or~~  
 158 ~~dental science, or therapy.~~

159 (3) ~~Any bank or storage facility for medical or dental~~  
 160 ~~education, research, advancement of medical or dental science,~~  
 161 ~~therapy, or transplantation.~~

162 (b) ~~(4)~~ Any individual specified by name for therapy or  
 163 transplantation needed by him or her.

164 (2) If multiple purposes are set forth in the document of  
 165 gift but are not set forth in any priority order, the anatomical  
 166 gift shall be used first for transplantation or therapy, if  
 167 suitable. If the gift cannot be used for transplantation or  
 168 therapy, the gift may be used for research or education.

169           (3) ~~However,~~ The Legislature declares that the public  
 170 policy of this state prohibits restrictions on the possible  
 171 recipients of an anatomical gift on the basis of race, color,  
 172 religion, gender ~~sex~~, national origin, age, physical disability  
 173 ~~handicap~~, health status, marital status, or economic status, and  
 174 such restrictions are ~~hereby declared~~ void and unenforceable.

175           Section 4. Section 765.514, Florida Statutes, is amended  
 176 to read:

177           765.514 Manner of making anatomical gifts.--

178           (1) A person may make an anatomical ~~a~~ gift of all or part  
 179 of his or her body under s. 765.512(1) by:

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

181           (b) Registering online with the ~~organ and tissue~~ donor  
 182 registry.

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

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

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

196           (f) Expressing a wish to donate in a document other than a

197 will. The document must be signed by the donor in the presence  
 198 of two witnesses who shall sign the document in the donor's  
 199 presence. If the donor cannot sign, the document may be signed  
 200 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. The following form of written document is sufficient  
 205 for any person to make an anatomical gift ~~give all or part of~~  
 206 ~~his or her body~~ for the purposes of this part:

207  
 208 UNIFORM DONOR CARD  
 209

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

213 I give:

- 214 (a) .... any needed organs, tissues, or eyes;
- 215 (b) .... only the following organs, tissues, or eyes  
 216 ...[Specify the organs, tissues, or eyes]...

217 for the purpose of transplantation, therapy, medical research,  
 218 or education;

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

220 Limitations or special wishes, if any:

221 ...(If applicable, list specific donee; this must be arranged in  
 222 advance with the donee.)...

223  
 224 Signed by the donor and the following witnesses in the presence



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225 of each other:

226  
 227 ... (Signature of donor) ...                      ... (Date of birth of donor) ...  
 228 ... (Date signed) ...    ... (City and State) ...  
 229  
 230 ... (Witness) ...    ... (Witness) ...  
 231 ... (Address) ...    ... (Address) ...  
 232

233           (2) The anatomical gift may be made to a donee listed in  
 234 s. 765.513, and the donee may be specified by name.

235           (3) Any anatomical gift by a health care surrogate  
 236 designated by the decedent pursuant to part II of this chapter  
 237 or a member of a class designated in s. 765.512(3) must be made  
 238 by a document signed by that person or made by that person's  
 239 witnessed telephonic discussion, telegraphic message, or other  
 240 recorded message.

241           Section 5. Section 765.515, Florida Statutes, is amended  
 242 to read:

243           765.515 Delivery of donor document.--

244           (1) If an anatomical ~~a~~ gift is made pursuant to s.  
 245 765.521, the completed donor registration card shall be  
 246 delivered to the department ~~of Highway Safety and Motor Vehicles~~  
 247 and the department must communicate the donor's intent to the  
 248 ~~organ and tissue~~ donor registry, but delivery is not necessary  
 249 to the validity of the gift. If the donor withdraws the gift,  
 250 the records of the department ~~of Highway Safety and Motor~~  
 251 ~~Vehicles~~ must be updated to reflect such withdrawal and the  
 252 department must communicate the withdrawal to the ~~organ and~~

253 ~~tissue~~ donor registry for the purpose of updating the registry.

254 (2) If an anatomical ~~a~~ gift is made by the donor to a  
 255 specified donee, the document of gift, other than a will, may be  
 256 delivered to the donee to expedite the appropriate procedures  
 257 immediately after death, but delivery is not necessary to the  
 258 validity of the gift. ~~The~~ Such document of gift may be deposited  
 259 in any hospital, bank, storage facility, or registry office that  
 260 accepts such documents for safekeeping or to facilitate the  
 261 donation of organs and tissue after death.

262 (3) At the request of any interested party upon or after  
 263 the donor's death, the person in possession shall produce the  
 264 document of gift for examination.

265 Section 6. Section 765.5155, Florida Statutes, is amended  
 266 to read:

267 765.5155 ~~Organ and tissue~~ Donor registry; education  
 268 program.--

269 (1) The Legislature finds that:

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

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

275 (c) A statewide ~~organ and tissue~~ donor registry having an  
 276 online donor registration process coupled with an enhanced  
 277 program of donor education will lead to an increase in the  
 278 number of organ and tissue donors registered in this state, thus  
 279 affording more persons who are awaiting organ or tissue  
 280 transplants the opportunity for a full and productive life.

281           (2) The agency ~~for Health Care Administration~~ and the  
282 department ~~of Highway Safety and Motor Vehicles~~ shall jointly  
283 contract for the operation of a ~~an organ and tissue~~ donor  
284 registry and education program. The contractor shall be procured  
285 by competitive solicitation pursuant to chapter 287,  
286 notwithstanding any exemption in s. 287.057(5)(f). When awarding  
287 the contract, priority shall be given to existing nonprofit  
288 groups that are based within the state, have expertise working  
289 with ~~organ and tissue~~ procurement organizations, have expertise  
290 in conducting statewide organ and tissue donor public education  
291 campaigns, and represent the needs of the organ and tissue  
292 donation community in the state.

293           (3) The contractor shall be responsible for:

294           (a) The development, implementation, and maintenance of an  
295 interactive web-based ~~organ and tissue~~ donor registry that,  
296 through electronic means, allows for online organ donor  
297 registration and the recording of organ and tissue donation  
298 records submitted through the driver's license identification  
299 program or through other sources.

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

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

306           (b) A continuing program to educate and inform medical  
307 professionals, law enforcement agencies and officers, other  
308 state and local government employees, high school students,

309 minorities, and the public about the laws of this state relating  
 310 to anatomical gifts and the need for anatomical gifts.

311 1. Existing community resources, when available, must be  
 312 used to support the program and volunteers may assist the  
 313 program to the maximum extent possible.

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

318 (c) Preparing and submitting an annual written report to  
 319 the agency ~~for Health Care Administration~~ by December 31 of each  
 320 year. The report must include:

321 1. The number of donors on the registry and an analysis of  
 322 the registration rates by location and method of donation;

323 2. The characteristics of donors as determined from  
 324 registry information submitted directly by the donors or by the  
 325 department ~~of Highway Safety and Motor Vehicles~~;

326 3. The annual dollar amount of voluntary contributions  
 327 received by the contractor;

328 4. A description of the educational campaigns and  
 329 initiatives implemented during the year and an evaluation of  
 330 their effectiveness in increasing enrollment on the registry;  
 331 and

332 5. An analysis of Florida's registry compared with other  
 333 states' donor registries.

334 (4) Costs for the ~~organ and tissue~~ donor registry and  
 335 education program shall be paid by the agency ~~for Health Care~~  
 336 ~~Administration~~ from the funds deposited into the Health Care

337 Trust Fund pursuant to ss. 320.08047 and 322.08, which are  
 338 designated for maintaining the ~~organ and tissue~~ donor registry  
 339 and education program. In addition, the contractor may receive  
 340 and use voluntary contributions to help support the registry and  
 341 provide education.

342 (5) The ~~organ and tissue~~ donor registry established by  
 343 this section is designated as the "Joshua Abbott Organ and  
 344 Tissue Registry."

345 Section 7. Section 765.51551, Florida Statutes, is amended  
 346 to read

347 765.51551 ~~Organ and tissue~~ Donor registry; public records  
 348 exemption.--

349 (1) Information held in the ~~organ and tissue~~ donor  
 350 registry which identifies a donor is confidential and exempt  
 351 from s. 119.07(1) and s. 24(a), Art. I of the State  
 352 Constitution.

353 (2) Such information may be disclosed to the following:

354 (a) ~~Organ, tissue, and eye~~ Procurement organizations that  
 355 have been certified by the agency ~~for Health Care Administration~~  
 356 for the purpose of ascertaining or effectuating the existence of  
 357 a gift under s. 765.522.

358 (b) Persons engaged in bona fide research if the person  
 359 agrees to:

360 1. Submit a research plan to the agency that specifies the  
 361 exact nature of the information requested and the intended use  
 362 of the information;

363 2. Maintain the confidentiality of the records or  
 364 information if personal identifying information is made

365 available to the researcher;

366 3. Destroy any confidential records or information  
367 obtained after the research is concluded; and

368 4. Not directly or indirectly contact, for any purpose,  
369 any donor or donee.

370 (3) This section is subject to the Open Government Sunset  
371 Review Act in accordance with s. 119.15 and shall stand repealed  
372 on October 2, 2013, unless reviewed and saved from repeal  
373 through reenactment by the Legislature.

374 Section 8. Section 765.516, Florida Statutes, is amended  
375 to read:

376 765.516 Donor amendment ~~of the terms of~~ or the revocation  
377 of anatomical ~~the~~ gift.--

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

380 (a) The execution and delivery to the donee of a signed  
381 statement witnessed by at least two adults, at least one of whom  
382 is a disinterested witness.

383 (b) An oral statement that is made in the presence of two  
384 persons, one of whom is ~~must~~ not ~~be~~ a family member, and  
385 communicated to the donor's family or attorney or to the donee.  
386 An oral statement is effective only if the procurement  
387 organization, transplant hospital, or physician or technician  
388 has actual notice of the oral amendment or revocation before an  
389 incision is made to the decedent's body or an invasive procedure  
390 to prepare the recipient has begun.

391 (c) A statement made during a terminal illness or injury  
392 addressed to an attending physician, who must communicate the

393 | revocation of the gift to the procurement organization ~~that is~~  
 394 | ~~certified by the state.~~

395 | (d) A signed document found on or about the donor's  
 396 | person.

397 | (e) Removing his or her name from the ~~organ and tissue~~  
 398 | donor registry.

399 | (f) A later-executed document of gift which amends or  
 400 | revokes a previous anatomical gift or portion of an anatomical  
 401 | gift, either expressly or by inconsistency.

402 | (g) The destruction or cancellation of the document of  
 403 | gift or the destruction or cancellation of that portion of the  
 404 | document of gift used to make the gift with the intent to revoke  
 405 | the gift.

406 | (2) Any anatomical gift made by a will may also be amended  
 407 | or revoked in the manner provided for the amendment or  
 408 | revocation of wills or as provided in paragraph (1)(a)  
 409 | ~~subsection (1).~~

410 | Section 9. Section 765.517, Florida Statutes, is amended  
 411 | to read:

412 | 765.517 Rights and duties at death.--

413 | (1) The donee, pursuant to ~~as specified under the~~  
 414 | ~~provisions of s. 765.515(2),~~ may accept or reject an anatomical  
 415 | ~~the gift.~~ If the donee accepts a gift ~~of the entire body or a~~  
 416 | ~~part of the body~~ to be used for research or education ~~scientific~~  
 417 | ~~purposes other than a transplant,~~ the donee may authorize  
 418 | embalming and the use of the body in funeral services, subject  
 419 | to the terms of the gift. If the gift is of a part of the body,  
 420 | the donee shall cause the part to be removed without unnecessary

421 mutilation upon the death of the donor and before or after  
422 embalming. After removal of the body part, custody of the  
423 remainder of the body vests in the surviving spouse, next of  
424 kin, or other persons under obligation to dispose of the body.

425 (2) The time of death shall be determined by a physician  
426 who attends the donor at the donor's death or, if there is no  
427 such physician, the physician who certifies the death. After  
428 death, those physicians or the donor's primary care ~~and in the~~  
429 ~~absence of other qualified personnel, this~~ physician may  
430 participate in, but may ~~shall~~ not obstruct, the procedures to  
431 preserve the donor's organs or tissues and may ~~shall~~ not be paid  
432 or reimbursed for such participation ~~by~~, nor be associated with  
433 or employed by, a ~~an organ~~ procurement organization, ~~tissue~~  
434 ~~bank, or eye bank.~~ These physicians may ~~This physician shall~~ not  
435 participate in the procedures for removing or transplanting a  
436 part. However, this subsection does not prevent a physician from  
437 serving in a voluntary capacity on the board of directors of a  
438 procurement organization or participating on any board, council,  
439 commission, or similar body related to the organ and tissue  
440 procurement system.

441 (3) The ~~organ~~ procurement organizations ~~organization,~~  
442 ~~tissue bank, or eye bank,~~ or hospital medical professionals  
443 under the direction thereof, may perform any and all tests to  
444 evaluate the deceased as a potential donor and any invasive  
445 procedures on the deceased body in order to preserve the  
446 potential donor's organs. These procedures do not include the  
447 surgical removal of an organ or penetrating any body cavity,  
448 specifically for the purpose of donation, until:



449 (a) It has been verified that the deceased's consent to  
 450 donate appears in the ~~organ and tissue~~ donor registry or a  
 451 properly executed ~~donor card or~~ document of gift is located; or

452 (b) If a properly executed ~~donor card or~~ document of gift  
 453 cannot be located or the deceased's consent is not listed in the  
 454 ~~organ and tissue~~ donor registry, a person specified in s.  
 455 765.512(2) or (3) has been located, has been notified of the  
 456 death, and has granted legal permission for the donation.

457 (4) All reasonable additional expenses incurred in the  
 458 procedures to preserve the donor's organs or tissues shall be  
 459 reimbursed by the ~~organ procurement organization, tissue bank,~~  
 460 ~~or eye bank.~~

461 (5) A person who acts in good faith and without negligence  
 462 in accord with the terms of this part or under the anatomical  
 463 gift laws of another state or a foreign country, or attempts to  
 464 do so, may not be subject to any civil action for damages, may  
 465 not be subject to any criminal proceeding, and may not be  
 466 subject to discipline, penalty, or liability in any  
 467 administrative proceeding ~~is not liable for damages in any civil~~  
 468 ~~action or subject to prosecution for his or her acts in any~~  
 469 ~~criminal proceeding.~~

470 (6) The provisions of this part are subject to the laws of  
 471 this state prescribing powers and duties with respect to  
 472 autopsies.

473 (7) The person making an anatomical gift and the donor's  
 474 estate are not liable for any injury or damages that result from  
 475 the making or use of the gift.

476 (8) In determining whether an anatomical gift has been

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477 made, amended, or revoked under this part, a person may rely  
478 upon the representation of an individual listed in s. 765.512,  
479 relating to the individual's relationship to the donor or  
480 prospective donor, unless the person knows that the  
481 representation is untrue.

482 Section 10. Section 765.521, Florida Statutes, is amended  
483 to read:

484 765.521 Donations as part of driver license or  
485 identification card process.--

486 (1) The agency ~~for Health Care Administration~~ and the  
487 department ~~of Highway Safety and Motor Vehicles~~ shall develop  
488 and implement a program encouraging and allowing persons to make  
489 anatomical gifts as a part of the process of issuing  
490 identification cards and issuing and renewing driver licenses.  
491 The donor registration card distributed by the department ~~of~~  
492 ~~Highway Safety and Motor Vehicles~~ shall include the information  
493 required by the uniform donor card under s. 765.514 and such  
494 additional information as determined necessary by the  
495 department. The department shall also develop and implement a  
496 program to identify donors, which includes notations on  
497 identification cards, driver licenses, and driver records or  
498 such other methods as the department develops to clearly  
499 indicate the individual's intent to make an anatomical gift  
500 ~~donate the individual's organs, tissues, or eyes~~. A notation on  
501 an individual's driver license or identification card that the  
502 individual intends to make an anatomical gift ~~donate organs,~~  
503 ~~tissues, or eyes~~ satisfies all requirements for consent to organ  
504 or tissue donation. The agency ~~for Health Care Administration~~

505 shall provide the necessary supplies and forms from funds  
 506 appropriated from general revenue or contributions from  
 507 interested voluntary, nonprofit organizations. The department  
 508 shall provide the necessary recordkeeping system from funds  
 509 appropriated from general revenue. The department ~~of Highway~~  
 510 ~~Safety and Motor Vehicles~~ and the agency ~~for Health Care~~  
 511 ~~Administration~~ shall incur no liability in connection with the  
 512 performance of any acts authorized herein.

513 (2) The department ~~of Highway Safety and Motor Vehicles,~~  
 514 after consultation with and concurrence by the agency ~~for Health~~  
 515 ~~Care Administration,~~ shall adopt rules to implement the  
 516 provisions of this section according to the provisions of  
 517 chapter 120.

518 (3) Funds expended by the agency ~~for Health Care~~  
 519 ~~Administration~~ to carry out the intent of this section may ~~shall~~  
 520 not be taken from ~~any~~ funds appropriated for patient care.

521 Section 11. Section 765.522, Florida Statutes, is amended  
 522 to read:

523 765.522 Duty of ~~certain~~ hospital administrators; liability  
 524 of hospital administrators and, ~~organ~~ procurement organizations,  
 525 ~~eye banks, and tissue banks.--~~

526 ~~(1) When used in this section, "hospital" means any~~  
 527 ~~establishment licensed under chapter 395 except psychiatric and~~  
 528 ~~rehabilitation hospitals.~~

529 (1) ~~(2)~~ If ~~Where,~~ based on accepted medical standards, a  
 530 hospital patient is a suitable candidate for organ or tissue  
 531 donation, the hospital administrator or the hospital  
 532 administrator's designee shall, at or near the time of death,

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533 notify the appropriate procurement organization ~~organ, eye, or~~  
534 ~~tissue recovery program~~, which shall access the ~~organ and tissue~~  
535 donor registry created by s. 765.5155 or any other donor  
536 registry to ascertain the existence of an entry in the registry  
537 which ~~that~~ has not been revoked, ~~a donor card~~, or a document of  
538 gift executed by the decedent. In the absence of an entry in the  
539 donor registry, a document of gift ~~donor card, organ donation~~  
540 ~~sticker or organ donation imprint on a driver's license~~, or  
541 other properly executed document, the procurement organization  
542 ~~organ, eye, or tissue recovery program~~ shall request:

543 (a) The patient's health care surrogate, as authorized in  
544 s. 765.512(2); or

545 (b) If the patient does not have a surrogate, or the  
546 surrogate is not reasonably available, any of the persons  
547 specified in s. 765.512(3), in the order and manner listed,

548  
549 to consent to the anatomical gift ~~of all or any part~~ of the  
550 decedent's body for any purpose specified in this part. Except  
551 as provided in s. 765.512, in the absence of actual notice of  
552 opposition, consent need only be obtained from the person or  
553 persons in the highest priority class reasonably available.

554 (3) A document of gift is valid if ~~made pursuant to a~~  
555 ~~request required by this section shall be~~ executed in accordance  
556 with this part or the laws of the state or country where it was  
557 executed and where the person making the anatomical gift was  
558 domiciled, has a place of residence, or was a citizen at the  
559 time the document of gift was executed ~~pursuant to s. 765.514.~~

560 (4) The agency ~~for Health Care Administration~~ shall

561 establish rules and guidelines concerning the education of  
562 individuals who may be designated to perform the request and the  
563 procedures to be used in making the request. The agency is  
564 authorized to adopt rules concerning the documentation of the  
565 request, where such request is made.

566 (5) If a document of gift is valid under this section, the  
567 laws of this state govern the interpretation of the document of  
568 gift.

569 (6) A document of gift or amendment of an anatomical gift  
570 is presumed to be valid unless it was not validly executed or  
571 was revoked.

572 (7)~~(5)~~ There shall be no civil or criminal liability  
573 against any ~~organ~~ procurement organization, ~~eye bank, or tissue~~  
574 ~~bank~~ certified under s. 765.542~~7~~, or against any hospital or  
575 hospital administrator or designee who complies, ~~when complying~~  
576 with the provisions of this part and agency ~~the rules of the~~  
577 ~~agency for Health Care Administration~~ or if ~~when~~, in the  
578 exercise of reasonable care, a request for organ donation is  
579 inappropriate and the gift is not made according to this part  
580 and agency ~~the rules of the agency for Health Care~~  
581 ~~Administration.~~

582 (8)~~(6)~~ The hospital administrator or a designee shall, at  
583 or near the time of death of a potential ~~organ~~ donor, directly  
584 notify the affiliated organ procurement organization ~~designated~~  
585 ~~by the United States Department of Health and Human Services of~~  
586 the potential ~~organ~~ donor. This ~~This organ~~ procurement  
587 organization must offer any organ from such a donor first to  
588 patients on a Florida-based local or state organ sharing

589 transplant list. For the purpose of this subsection, the term  
 590 "transplant list" includes certain categories of national or  
 591 regional organ sharing for patients of exceptional need or  
 592 exceptional match, as approved or mandated by the Organ  
 593 Procurement and Transplantation Network, or its agent. This  
 594 notification may not be made to a tissue bank or eye bank in  
 595 lieu of the organ procurement organization unless the tissue  
 596 bank or eye bank is also designated as an organ procurement  
 597 organization ~~by the United States Department of Health and Human~~  
 598 ~~Services.~~

599 Section 12. Subsections (1), (5), and (6) of section  
 600 765.53, Florida Statutes, are amended to read:

601 765.53 Organ Transplant Advisory Council; membership;  
 602 responsibilities.--

603 (1) ~~There is hereby created within the agency for Health~~  
 604 ~~Care Administration~~ A statewide technical Organ Transplant  
 605 Advisory Council is created within the agency, consisting of 12  
 606 ~~twelve~~ members who are physicians licensed under chapter 458 or  
 607 chapter 459, to represent the interests of the public and the  
 608 clients of the Department of Health or the agency. ~~The members~~  
 609 ~~shall be physicians licensed according to chapter 458 or chapter~~  
 610 ~~459.~~ A person employed by the agency may not be appointed as a  
 611 member of the council.

612 (5) Members of the council shall receive no compensation,  
 613 but shall be reimbursed for per diem and travel expenses by the  
 614 agency ~~for Health Care Administration~~ in accordance with ~~the~~  
 615 ~~provisions of~~ s. 112.061 while engaged in the performance of  
 616 their duties.

617 (6) The responsibilities of the council shall be to  
 618 recommend to the agency ~~for Health Care Administration~~  
 619 indications for adult and pediatric organ transplants. The  
 620 council shall also formulate guidelines and standards for organ  
 621 transplants and for the development of End Stage Organ Disease  
 622 and Tissue/Organ Transplant programs. The recommendations,  
 623 guidelines, and standards developed by the council are  
 624 applicable only to those health programs funded through the  
 625 agency ~~for Health Care Administration~~.

626 Section 13. Section 765.541, Florida Statutes, is amended  
 627 to read:

628 765.541 Certification of procurement organizations ~~engaged~~  
 629 ~~in the practice of cadaveric organ and tissue procurement.~~--The  
 630 agency ~~for Health Care Administration~~ shall:

631 (1) Establish a program for the certification of  
 632 organizations, corporations ~~agencies~~, or other entities engaged  
 633 in the procurement of organs, tissues, and eyes for  
 634 transplantation. ~~†~~

635 (2) Adopt rules that set forth appropriate standards and  
 636 guidelines for the program in accordance with ss. 765.541-  
 637 765.546 and part II of chapter 408. These standards and  
 638 guidelines must be substantially based on the existing laws of  
 639 the Federal Government and this state and the existing standards  
 640 and guidelines of the United Network for Organ Sharing (UNOS),  
 641 the American Association of Tissue Banks (AATB), the South-  
 642 Eastern Organ Procurement Foundation (SEOPF), the North American  
 643 Transplant Coordinators Organization (NATCO), and the Eye Bank  
 644 Association of America (EBAA). In addition, the agency ~~for~~

645 ~~Health Care Administration~~ shall, before adopting these  
 646 standards and guidelines, seek input from all ~~organ~~ procurement  
 647 organizations, ~~tissue banks, and eye banks~~ based in this state. ;

648 (3) Collect, keep, and make available to the Governor and  
 649 the Legislature information regarding the numbers and  
 650 disposition of organs, and tissues, and eyes procured by each  
 651 certified procurement organization. ~~entity;~~

652 (4) Monitor procurement organizations ~~participating~~  
 653 ~~facilities and agencies~~ for program compliance. ; ~~and~~

654 (5) Provide for the administration of the Organ and Tissue  
 655 Procurement and Transplantation Advisory Board.

656 Section 14. Section 765.542, Florida Statutes, is amended  
 657 to read:

658 765.542 Certification of ~~organ~~ procurement organizations,   
 659 ~~tissue banks, and eye banks.~~--

660 (1) The requirements of part II of chapter 408 apply to  
 661 the provision of services that require licensure pursuant to ss.  
 662 765.541-765.546 and part II of chapter 408 and to entities  
 663 licensed or certified by or applying for such licensure or  
 664 certification from the agency ~~for Health Care Administration~~  
 665 pursuant to ss. 765.541-765.546. A person ~~An organization,~~  
 666 ~~agency, or other entity~~ may not engage in the practice of organ  
 667 procurement in this state without being designated as an organ  
 668 procurement organization ~~by the secretary of the United States~~  
 669 ~~Department of Health and Human Services~~ and being appropriately  
 670 certified by the agency ~~for Health Care Administration.~~ ~~As used~~  
 671 ~~in this subsection, the term "procurement" includes the~~  
 672 ~~retrieval, processing, or distribution of human organs.~~ A



673 physician or organ procurement organization based outside this  
674 state is exempt from these certification requirements if:

675 (a) The organs are procured for an out-of-state patient  
676 who is listed on, or referred through, the United Network for  
677 Organ Sharing System; and

678 (b) The organs are procured through an agreement of an  
679 organ procurement organization certified by the state.

680 (2) A person ~~An organization, agency, or other entity~~ may  
681 not engage in tissue procurement in this state unless it is  
682 appropriately certified as a tissue bank by the agency ~~for~~  
683 ~~Health Care Administration. As used in this subsection, the term~~  
684 ~~"procurement" includes any retrieval, processing, storage, or~~  
685 ~~distribution of human tissue for transplantation.~~

686 (3) A person ~~An organization, agency, or other entity~~ may  
687 not engage in the practice of eye procurement in this state  
688 without being appropriately certified as an eye bank by the  
689 agency ~~for Health Care Administration. As used in this~~  
690 ~~subsection, the term "procurement" includes the retrieval,~~  
691 ~~processing, or distribution of human eye tissue.~~ Funeral  
692 directors or direct disposers who ~~that~~ retrieve eye tissue for  
693 an eye bank certified under this subsection are exempt from the  
694 certification requirements under this subsection.

695 (4) A limited certificate may be issued to a tissue bank  
696 or eye bank, certifying only those components of procurement  
697 which the bank has chosen to perform. The agency ~~for Health Care~~  
698 ~~Administration~~ may issue a limited certificate if it determines  
699 that the tissue bank or eye bank is adequately staffed and  
700 equipped to operate in conformity with the rules adopted under

701 | this section.

702 |       Section 15. Subsection (3) of section 765.543, Florida  
703 | Statutes, is amended to read:

704 |       765.543 Organ and Tissue Procurement and Transplantation  
705 | Advisory Board; creation; duties.--

706 |       (3) The board shall:

707 |       (a) Assist the agency ~~for Health Care Administration~~ in  
708 | the development of necessary professional qualifications,  
709 | including, but not limited to, the education, training, and  
710 | performance of persons engaged in the various facets of organ  
711 | and tissue procurement, processing, preservation, and  
712 | distribution for transplantation;

713 |       (b) Assist the agency ~~for Health Care Administration~~ in  
714 | monitoring the appropriate and legitimate expenses associated  
715 | with organ and tissue procurement, processing, and distribution  
716 | for transplantation and developing methodologies to ensure  
717 | ~~assure~~ the uniform statewide reporting of data to facilitate the  
718 | accurate and timely evaluation of the organ and tissue  
719 | procurement and transplantation system;

720 |       (c) Provide assistance to the Florida Medical Examiners  
721 | Commission in the development of appropriate procedures and  
722 | protocols to ensure ~~assure~~ continued improvement in the approval  
723 | and release of potential ~~organ and tissue~~ donors by the district  
724 | medical examiners and associate medical examiners;

725 |       (d) Develop with and recommend to the agency ~~for Health~~  
726 | ~~Care Administration~~ the necessary procedures and protocols  
727 | required to assure that all residents of this state have  
728 | reasonable access to available organ and tissue transplantation

729 therapy and that residents of this state can be reasonably  
 730 assured that the statewide procurement transplantation system is  
 731 ~~will be~~ able to fulfill their organ and tissue requirements  
 732 within the limits of the available supply and according to the  
 733 severity of their medical condition and need; and

734 (e) Develop with and recommend to the agency ~~for Health~~  
 735 ~~Care Administration~~ any changes to the laws of this state or  
 736 administrative rules or procedures ~~required~~ to ensure ~~assure~~  
 737 that the statewide organ and tissue procurement and  
 738 transplantation system is ~~will be~~ able to function smoothly,  
 739 effectively, and efficiently, in accordance with the Federal  
 740 Anatomical Gift Act and in a manner that assures the residents  
 741 of this state that no person or entity profits from the  
 742 altruistic voluntary donation of organs or tissues.

743 Section 16. Section 765.544, Florida Statutes, is amended  
 744 to read

745 765.544 Fees; organ and tissue donor education and  
 746 procurement.--

747 (1) In accordance with s. 408.805, an applicant or a  
 748 certificateholder shall pay a fee for each application submitted  
 749 under this part, part II of chapter 408, and applicable rules.  
 750 The amount of the fee shall be as follows:

751 (a) An initial application fee of \$1,000 from organ  
 752 procurement organizations and tissue banks and \$500 from eye  
 753 banks.

754 (b) Annual fees to be used, in the following order of  
 755 priority, for the certification program, the advisory board,  
 756 maintenance of the ~~organ and tissue~~ donor registry, and the

757 organ and tissue donor education program ~~in the following~~  
758 ~~amounts~~, which may not exceed \$35,000 per organization:

759 1. Each ~~general~~ organ procurement organization shall pay  
760 the greater of \$1,000 or 0.25 percent of its total revenues  
761 produced from procurement activity in this state by the  
762 certificateholder during its most recently completed fiscal ~~year~~  
763 or operational year.

764 2. Each ~~bone and tissue procurement organization agency or~~  
765 ~~bone and tissue bank~~ shall pay the greater of \$1,000 or 0.25  
766 percent of its total revenues from procurement and processing  
767 activity in this state by the certificateholder during its most  
768 recently completed fiscal ~~year~~ or operational year.

769 3. Each eye bank shall pay the greater of \$500 or 0.25  
770 percent of its total revenues produced from procurement activity  
771 in this state by the certificateholder during its most recently  
772 completed fiscal ~~year~~ or operational year.

773 (2) The agency ~~for Health Care Administration~~ shall  
774 specify by rule the administrative penalties for the purpose of  
775 ensuring adherence to the standards of quality and practice  
776 required by this chapter, part II of chapter 408, and applicable  
777 rules of the agency for continued certification.

778 (3) (a) Proceeds from fees, administrative penalties, and  
779 surcharges collected pursuant to this section must be deposited  
780 into the Health Care Trust Fund.

781 (b) Moneys deposited in the trust fund pursuant to this  
782 section must be used exclusively for the implementation,  
783 administration, and operation of the certification program and  
784 the advisory board, for maintaining the ~~organ and tissue donor~~

785 registry, and for organ and tissue donor education.

786 (4) As used in this section, the term "procurement  
787 activity in this state" includes the bringing into this state  
788 for processing, storage, distribution, or transplantation of  
789 organs or tissues that are initially procured in another state  
790 or country.

791 Section 17. Section 765.545, Florida Statutes, is amended  
792 to read:

793 765.545 Physician supervision of cadaveric organ and  
794 tissue procurement coordinators.--~~Organ Procurement~~  
795 ~~organizations, tissue banks, and eye banks~~ may employ  
796 coordinators, who are registered nurses, physician's assistants,  
797 or other medically trained personnel who meet the relevant  
798 standards for ~~organ procurement organizations, tissue banks, or~~  
799 ~~eye banks~~ as adopted by the agency for Health Care  
800 Administration under s. 765.541, to assist in the medical  
801 management of organ donors or in the surgical procurement of  
802 cadaveric organs, tissues, or eyes for transplantation or  
803 research. A coordinator who assists in the medical management of  
804 organ donors or in the surgical procurement of cadaveric organs,  
805 tissues, or eyes for transplantation or research must do so  
806 under the direction and supervision of a licensed physician  
807 medical director pursuant to rules and guidelines ~~to be~~ adopted  
808 by the agency ~~for Health Care Administration~~. With the exception  
809 of organ procurement surgery, this supervision may be indirect  
810 supervision. For purposes of this section, the term "indirect  
811 supervision" means that the medical director is responsible for  
812 the medical actions of the coordinator, that the coordinator is

813 | operating under protocols expressly approved by the medical  
 814 | director, and that the medical director or his or her physician  
 815 | designee is always available, in person or by telephone, to  
 816 | provide medical direction, consultation, and advice in cases of  
 817 | organ, tissue, and eye donation and procurement. Although  
 818 | indirect supervision is authorized under this section, direct  
 819 | physician supervision is to be encouraged when appropriate.

820 |       Section 18. Section 765.547, Florida Statutes, is created  
 821 | to read:

822 |       765.547 Cooperation between medical examiner and  
 823 | procurement organization.--

824 |       (1) A medical examiner and procurement organization shall  
 825 | cooperate with each other in order to maximize opportunities to  
 826 | recover anatomical gifts for the purpose of transplantation,  
 827 | therapy, research, or education.

828 |       (2) The Florida Medical Examiners Commission shall adopt  
 829 | rules establishing cooperative responsibilities between medical  
 830 | examiners and procurement organizations to facilitate and  
 831 | expedite completion of the medical examiner's responsibilities  
 832 | under chapter 406 in a manner that will maximize opportunities  
 833 | to recover anatomical gifts.

834 |       (3) This part does not supersede any part of chapter 406  
 835 | relating to medical examiners and the disposition of dead  
 836 | bodies.

837 |       Section 19. Subsection (30) of section 408.802, Florida  
 838 | Statutes, is amended to read:

839 |       408.802 Applicability.--The provisions of this part apply  
 840 | to the provision of services that require licensure as defined

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841 in this part and to the following entities licensed, registered,  
 842 or certified by the agency, as described in chapters 112, 383,  
 843 390, 394, 395, 400, 429, 440, 483, and 765:

844 (30) Organ, ~~and~~ tissue, and eye procurement organizations  
 845 ~~agencies~~, as provided under part V of chapter 765.

846 Section 20. Subsection (29) of section 408.820, Florida  
 847 Statutes, is amended to read:

848 408.820 Exemptions.--Except as prescribed in authorizing  
 849 statutes, the following exemptions shall apply to specified  
 850 requirements of this part:

851 (29) Organ, ~~and~~ tissue, and eye procurement organizations  
 852 ~~agencies~~, as provided under part V of chapter 765, are exempt  
 853 from s. 408.810(5)-(10).

854 Section 21. This act shall take effect July 1, 2009.