

By Senator Sobel

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

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30 person knows that the decedent made a refusal that was
31 not revoked; creating s. 765.5112, F.S.; requiring
32 specified persons to make a reasonable search of an
33 individual who the person reasonably believes is dead
34 or near death for a document of gift or other
35 information identifying the individual as a donor or
36 as an individual who made a refusal; providing duties
37 if a document of gift or a refusal to make an
38 anatomical gift is located; providing immunity from
39 criminal or civil liability for failure to discharge
40 specified duties; creating s. 765.5113, F.S.;

41 providing that delivery of a document of gift is not a
42 requirement for its effectiveness; requiring a person
43 in possession of a document of gift or a refusal to
44 make an anatomical gift with respect to the individual
45 to allow examination and copying of the document;

46 creating s. 765.5114, F.S.; specifying rights and
47 duties of procurement organizations when an individual
48 has been referred to them; allowing the person to whom
49 a part passes under specified provisions to conduct
50 any reasonable examination necessary to ensure the
51 medical suitability of the body or part for its
52 intended purpose unless otherwise prohibited;

53 requiring a procurement organization, upon the death
54 of a minor who was a donor or who had refused, to
55 conduct a reasonable search for the parents of the
56 minor and provide them with an opportunity to revoke
57 or amend the gift or revoke the refusal; providing
58 that the rights of the person to whom a part passes

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59 under a specified provision are superior to the rights
60 of all others with respect to the part; prohibiting
61 both the physician who attends the decedent at death
62 and the physician who determines the time of death
63 from participating in removing or transplanting a
64 part; creating s. 765.5115, F.S.; requiring each
65 hospital in this state to enter into agreements or
66 affiliations with procurement organizations for
67 specified purposes; creating s. 765.5117, F.S.;

68 prohibiting intentional falsification, forgery, and
69 other acts concerning a document of gift, an amendment
70 or revocation of a document of gift, or a refusal in
71 order to obtain a financial gain; providing criminal
72 penalties; creating s. 765.5118, F.S.; providing
73 immunity in a civil action, criminal prosecution, or
74 administrative proceeding to a person who acts in
75 accordance with the act or with the applicable
76 anatomical gift law of another state, or attempts in
77 good faith to do so; providing immunity from liability
78 to the donor and the donor's estate for use of the
79 gift; permitting reliance on specified representations
80 in determining whether an anatomical gift has been
81 made, amended, or revoked; creating s. 765.5119, F.S.;

82 specifying the law governing validity of a document of
83 gift; providing for the law governing the
84 interpretation of a document of gift in certain
85 circumstances; providing a presumption of validity;

86 renumbering s. 765.5155, F.S., relating to the organ
87 and tissue donor registry, as s. 765.5120, F.S.;

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88 renumbering s. 765.51551, F.S., relating to an organ
89 and tissue donor registry public records exemption, as
90 s. 765.51201, F.S.; creating s. 765.5121, F.S.;
91 providing for the effect of an anatomical gift on an
92 advance health care directive; creating s. 765.5122,
93 F.S.; requiring cooperation between medical examiners
94 and procurement organizations; creating s. 765.5123,
95 F.S.; providing for facilitation of anatomical gifts
96 from decedents whose bodies are under the jurisdiction
97 of medical examiners; requiring persons with
98 information requested by a medical examiner conducting
99 a medicolegal examination about a donor or prospective
100 donor whose body is under the examiner's jurisdiction
101 to provide that information as expeditiously as
102 possible; requiring a medical examiner and procurement
103 organization to cooperate in the timely removal of a
104 part when recovery of the part will not interfere with
105 the examination; requiring consultation between a
106 medical examiner and a procurement organization when
107 the medical examiner believes that recovery of the
108 part could interfere with the postmortem investigation
109 into the decedent's cause or manner of death;
110 requiring a medical examiner who intends to deny
111 recovery to attend, if requested, the removal
112 procedure for the part before making a final
113 determination not to allow recovery of the part;
114 requiring a medical examiner denying recovery to make
115 specified recorded findings; requiring a procurement
116 organization in certain circumstances, upon request,

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117 to provide the medical examiner with a records
118 concerning a part assist in the postmortem
119 examination; requiring a procurement organization to
120 reimburse a medical examiner for additional costs
121 incurred by the examiner who is required to be present
122 in certain circumstances; creating s. 765.5124, F.S.;
123 providing for uniformity of application and
124 construction of the revised act; creating s. 765.5125,
125 F.S.; providing for relation of the revised act to the
126 Electronic Signatures in Global and National Commerce
127 Act; repealing s. 765.510, F.S., relating to a
128 legislative declaration; repealing s. 765.511, F.S.,
129 relating to definitions; repealing s. 765.512, F.S.,
130 relating to persons who may make an anatomical gift;
131 repealing s. 765.513, F.S., relating to persons and
132 entities that may become donees and purposes for which
133 anatomical gifts may be made; repealing s. 765.514,
134 F.S., relating to manner of making anatomical gifts;
135 repealing s. 765.515, F.S., relating to delivery of a
136 donor document; repealing s. 765.516, F.S., relating
137 to amendment of the terms of or the revocation of the
138 gift; repealing s. 765.517, F.S., relating to rights
139 and duties at death; amending ss. 381.0041, 765.521,
140 and 765.522, F.S.; revising cross-references to
141 conform to changes made by the act; providing an
142 effective date.

143
144 Be It Enacted by the Legislature of the State of Florida:
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146 Section 1. Section 765.5101, Florida Statutes, is created
147 to read:

148 765.5101 Short title.—Sections 765.5101-765.5125 may be
149 cited as the “Revised Uniform Anatomical Gift Act.”

150 Section 2. Section 765.5102, Florida Statutes, is created
151 to read:

152 765.5102 Definitions.—As used in ss. 765.5101-765.5125, the
153 term:

154 (1) “Adult” means an individual who is at least 18 years of
155 age.

156 (2) “Agent” means an individual who is:

157 (a) Authorized to make health care decisions on the
158 principal's behalf by a power of attorney for health care; or

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

161 (3) “Anatomical gift” means a donation of all or part of a
162 human body to take effect after the donor's death for the
163 purpose of transplantation, therapy, research, or education.

164 (4) “Decedent” means a deceased individual whose body or
165 part is or may be the source of an anatomical gift. The term
166 includes a stillborn infant and, subject to restrictions imposed
167 by law other than ss. 765.5101-765.5125, a fetus.

168 (5) “Disinterested witness” means a witness other than a
169 spouse, child, parent, sibling, grandchild, grandparent, or
170 guardian of the individual who makes, amends, revokes, or
171 refuses to make an anatomical gift, or another adult who
172 exhibited special care and concern for the individual. The term
173 does not include a person to whom an anatomical gift could pass
174 under s. 765.5111.

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175 (6) "Document of gift" means a donor card or other record
176 used to make an anatomical gift and includes a statement or
177 symbol on a driver's license, identification card, or donor
178 registry.

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

181 (8) "Donor registry" means a database that contains records
182 of anatomical gifts and amendments to or revocations of
183 anatomical gifts.

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

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

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

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

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

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

202 (15) "Organ procurement organization" means a person
203 designated by the Secretary of the United States Department of

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204 Health and Human Services as an organ procurement organization.

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

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

209 (18) "Person" means an individual, corporation, business
210 trust, estate, trust, partnership, limited liability company,
211 association, joint venture, public corporation, government or
212 governmental subdivision, agency, or instrumentality or any
213 other legal or commercial entity.

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

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

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

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

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

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

232 (25) "Refusal" means a record created under s. 765.5107

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233 that expressly states an intent to bar other persons from making
234 an anatomical gift of an individual's body or part.

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

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

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

240 (27) "State" means a state of the United States, the
241 District of Columbia, Puerto Rico, the United States Virgin
242 Islands, or any territory or insular possession subject to the
243 jurisdiction of the United States.

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

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

251 (30) "Tissue bank" means a person licensed, accredited, or
252 regulated under federal or state law to engage in the recovery,
253 screening, testing, processing, storage, or distribution of
254 tissue.

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

258 Section 3. Section 765.5103, Florida Statutes, is created
259 to read:

260 765.5103 Applicability.—Sections 765.5101-765.5125 apply to
261 an anatomical gift or amendment to, revocation of, or refusal to

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262 make an anatomical gift, whenever made.

263 Section 4. Section 765.5104, Florida Statutes, is created
264 to read:

265 765.5104 Persons who may make an anatomical gift before the
266 donor's death.—Subject to s. 765.5108, an anatomical gift of a
267 donor's body or part may be made during the life of the donor
268 for the purpose of transplantation, therapy, research, or
269 education in the manner provided in s. 765.5105 by:

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

272 (a) Emancipated; or

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

275 (2) An agent of the donor, unless the power of attorney for
276 health care or other record prohibits the agent from making an
277 anatomical gift.

278 (3) A parent of the donor, if the donor is an unemancipated
279 minor.

280 (4) The donor's guardian.

281 Section 5. Section 765.5105, Florida Statutes, is created
282 to read:

283 765.5105 Manner of making an anatomical gift before the
284 donor's death.—

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

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

289 (b) In a will;

290 (c) During a terminal illness or injury of the donor, by

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291 any form of communication addressed to at least two adults, at
292 least one of whom is a disinterested witness; or

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

294 (2) A donor or other person authorized to make an
295 anatomical gift under s. 765.5104 may make a gift by a donor
296 card or other record signed by the donor or other person making
297 the gift or by authorizing that a statement or symbol indicating
298 that the donor has made an anatomical gift be included on a
299 donor registry. If the donor or other person is physically
300 unable to sign a record, the record may be signed by another
301 individual at the direction of the donor or other person and
302 must:

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

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

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

311 (4) An anatomical gift made by will takes effect upon the
312 donor's death whether or not the will is probated. Invalidation
313 of the will after the donor's death does not invalidate the
314 gift.

315 Section 6. Section 765.5106, Florida Statutes, is created
316 to read:

317 765.5106 Amending or revoking an anatomical gift before the
318 donor's death.—

319 (1) Subject to s. 765.5108, a donor or other person

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320 authorized to make an anatomical gift under s. 765.5104 may
321 amend or revoke an anatomical gift by:

322 (a) A record signed by:

323 1. The donor;

324 2. The other person; or

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

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

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

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

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

337 (3) Subject to s. 765.5108, a donor or other person
338 authorized to make an anatomical gift under s. 765.5104 may
339 revoke an anatomical gift by the destruction or cancellation of
340 the document of gift, or the portion of the document of gift
341 used to make the gift, with the intent to revoke the gift.

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

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

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349 Section 7. Section 765.5107, Florida Statutes, is created
350 to read:

351 765.5107 Refusal to make an anatomical gift; effect of
352 refusal.—

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

355 (a) A record signed by:

356 1. The individual; or

357 2. Subject to subsection (2), another individual acting at
358 the direction of the individual if the individual is physically
359 unable to sign;

360 (b) The individual's will, whether or not the will is
361 admitted to probate or invalidated after the individual's death;
362 or

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

367 (2) A record signed pursuant to subparagraph (1)(a)2. must:

368 (a) Be witnessed by at least two adults, at least one of
369 whom is a disinterested witness, who have signed at the request
370 of the individual.

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

373 (3) An individual who has made a refusal may amend or
374 revoke the refusal:

375 (a) In the manner provided in subsection (1) for making a
376 refusal;

377 (b) By subsequently making an anatomical gift pursuant to

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378 s. 765.5105 that is inconsistent with the refusal; or

379 (c) By destroying or canceling the record evidencing the
380 refusal, or the portion of the record used to make the refusal,
381 with the intent to revoke the refusal.

382 (4) Except as otherwise provided in s. 765.5108(8), in the
383 absence of an express, contrary indication by the individual set
384 forth in the refusal, an individual's unrevoked refusal to make
385 an anatomical gift of the individual's body or part bars all
386 other persons from making an anatomical gift of the individual's
387 body or part.

388 Section 8. Section 765.5108, Florida Statutes, is created
389 to read:

390 765.5108 Preclusive effect of an anatomical gift,
391 amendment, or revocation.—

392 (1) Except as otherwise provided in subsection (7) and
393 subject to subsection (6), in the absence of an express,
394 contrary indication by the donor, a person other than the donor
395 is barred from making, amending, or revoking an anatomical gift
396 of a donor's body or part if the donor made an anatomical gift
397 of the donor's body or part under s. 765.5105 or an amendment to
398 an anatomical gift of the donor's body or part under s.
399 765.5106.

400 (2) A donor's revocation of an anatomical gift of the
401 donor's body or part under s. 765.5106 is not a refusal and does
402 not bar another person specified in s. 765.5104 or s. 765.5109
403 from making an anatomical gift of the donor's body or part under
404 s. 765.5105 or s. 765.5110.

405 (3) If a person other than the donor makes an unrevoked
406 anatomical gift of the donor's body or part under s. 765.5105 or

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407 an amendment to an anatomical gift of the donor's body or part
408 under s. 765.5106, another person may not make, amend, or revoke
409 the gift of the donor's body or part under s. 765.5110.

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

414 (5) In the absence of an express, contrary indication by
415 the donor or other person authorized to make an anatomical gift
416 under s. 765.5104, an anatomical gift of a part is neither a
417 refusal to give another part nor a limitation on the making of
418 an anatomical gift of another part at a later time by the donor
419 or another person.

420 (6) In the absence of an express, contrary indication by
421 the donor or other person authorized to make an anatomical gift
422 under s. 765.5104, an anatomical gift of a part for one or more
423 of the purposes set forth in s. 765.5104 is not a limitation on
424 the making of an anatomical gift of the part for any of the
425 other purposes by the donor or any other person under s.
426 765.5105 or s. 765.5110.

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

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

433 Section 9. Section 765.5109, Florida Statutes, is created
434 to read:

435 765.5109 Who may make an anatomical gift of a decedent's

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436 body or part.-

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

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

446 (b) The spouse of the decedent.

447 (c) Adult children of the decedent.

448 (d) Parents of the decedent.

449 (e) Adult siblings of the decedent.

450 (f) Adult grandchildren of the decedent.

451 (g) Grandparents of the decedent.

452 (h) An adult who exhibited special care and concern for the
453 decedent.

454 (i) The persons who were acting as the guardians of the
455 person of the decedent at the time of death.

456 (j) Any other person having the authority to dispose of the
457 decedent's body.

458 (2) If there is more than one member of a class listed in
459 paragraphs (1)(a), (c), (d), (e), (f), (g), or (i) who is
460 entitled to make an anatomical gift, an anatomical gift may be
461 made by a member of the class unless that member or a person to
462 whom the gift may pass under s. 765.5111 knows of an objection
463 by another member of the class. If an objection is known, the
464 gift may be made only by a majority of the members of the class

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465 who are reasonably available.

466 (3) A person may not make an anatomical gift if, at the
467 time of the decedent's death, a person in a prior class under
468 subsection (1) is reasonably available to make or to object to
469 the making of an anatomical gift.

470 (4) A health care surrogate designated by the decedent
471 pursuant to part II of this chapter may give all or any part of
472 the decedent's body for any purpose specified in s. 765.5111
473 absent actual notice of contrary indications by the decedent.

474 Section 10. Section 765.5110, Florida Statutes, is created
475 to read:

476 765.5110 Manner of making, amending, or revoking an
477 anatomical gift of a decedent's body or part.-

478 (1) A person authorized to make an anatomical gift under s.
479 765.5109 may make an anatomical gift by a document of gift
480 signed by the person making the gift or by that person's oral
481 communication that is electronically recorded or is
482 contemporaneously reduced to a record and signed by the
483 individual receiving the oral communication.

484 (2) Subject to subsection (3), an anatomical gift by a
485 person authorized under s. 765.5109 may be amended or revoked
486 orally or in a record by any member of a prior class who is
487 reasonably available. If more than one member of the prior class
488 is reasonably available, the gift made by a person authorized
489 under s. 765.5109 may be:

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

492 (b) Revoked only if a majority of the reasonably available
493 members agree to the revoking of the gift or if they are equally

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494 divided as to whether to revoke the gift.

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

500 Section 11. Section 765.5111, Florida Statutes, is created
501 to read:

502 765.5111 Persons who may receive an anatomical gift;
503 purpose of an anatomical gift.-

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

506 (a) A hospital; an accredited medical school, dental
507 school, college, or university; an organ procurement
508 organization; or other appropriate person, for research or
509 education.

510 (b) Subject to subsection (2), an individual designated by
511 the person making the anatomical gift if the individual is the
512 recipient of the part.

513 (c) An eye bank or tissue bank.

514 (2) If an anatomical gift to an individual under paragraph
515 (1)(b) cannot be transplanted into that individual, the part
516 passes in accordance with subsection (7) in the absence of an
517 express, contrary indication by the person making the anatomical
518 gift.

519 (3) If an anatomical gift of one or more specific parts or
520 all parts is made in a document of gift that does not name a
521 person described in subsection (1) but identifies the purpose
522 for which an anatomical gift may be used, the following rules

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523 apply:

524 (a) If the part is an eye and the gift is for the purpose
525 of transplantation or therapy, the gift passes to the
526 appropriate eye bank.

527 (b) If the part is tissue and the gift is for the purpose
528 of transplantation or therapy, the gift passes to the
529 appropriate tissue bank.

530 (c) If the part is an organ and the gift is for the purpose
531 of transplantation or therapy, the gift passes to the
532 appropriate organ procurement organization as custodian of the
533 organ.

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

537 (4) For the purpose of subsection (3), if there is more
538 than one purpose of an anatomical gift set forth in the document
539 of gift but the purposes are not set forth in any priority, the
540 gift must be used for transplantation or therapy, if suitable.
541 If the gift cannot be used for transplantation or therapy, the
542 gift may be used for research or education.

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

548 (6) If a document of gift specifies only a general intent
549 to make an anatomical gift by words such as "donor," "organ
550 donor," or "body donor," or by a symbol or statement of similar
551 import, the gift may be used only for transplantation or

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552 therapy, and the gift passes in accordance with subsection (7).

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

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

557 (b) If the part is tissue, the gift passes to the
558 appropriate tissue bank.

559 (c) If the part is an organ, the gift passes to the
560 appropriate organ procurement organization as custodian of the
561 organ.

562 (8) An anatomical gift of an organ for transplantation or
563 therapy, other than an anatomical gift under paragraph (1)(b),
564 passes to the organ procurement organization as custodian of the
565 organ.

566 (9) If an anatomical gift does not pass pursuant to
567 subsections (1)-(8) or the decedent's body or part is not used
568 for transplantation, therapy, research, or education, custody of
569 the body or part passes to the person under obligation to
570 dispose of the body or part.

571 (10) A person may not accept an anatomical gift if the
572 person knows that the gift was not effectively made under s.
573 765.5105 or s. 765.5110 or if the person knows that the decedent
574 made a refusal under s. 765.5107 that was not revoked. For
575 purposes of the subsection, if a person knows that an anatomical
576 gift was made on a document of gift, the person is deemed to
577 know of any amendment or revocation of the gift or any refusal
578 to make an anatomical gift on the same document of gift.

579 (11) Except as otherwise provided in paragraph (1)(b),
580 nothing in ss. 765.5101-765.5125 affects the allocation of

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581 organs for transplantation or therapy.

582 Section 12. Section 765.5112, Florida Statutes, is created
583 to read:

584 765.5112 Search and notification.—

585 (1) The following persons shall make a reasonable search of
586 an individual who the person reasonably believes to be dead or
587 near death for a document of gift or other information
588 identifying the individual as a donor or as an individual who
589 made a refusal:

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

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

595 (2) If a document of gift or a refusal to make an
596 anatomical gift is located by the search required by paragraph
597 (1)(a) and the individual or deceased individual to whom it
598 relates is taken to a hospital, the person responsible for
599 conducting the search shall send the document of gift or refusal
600 to the hospital.

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

604 Section 13. Section 765.5113, Florida Statutes, is created
605 to read:

606 765.5113 Delivery of a document of gift not required; right
607 to examine.—

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

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610 (2) Upon or after an individual's death, a person in
611 possession of a document of gift or a refusal to make an
612 anatomical gift with respect to the individual shall allow
613 examination and copying of the document of gift or refusal by a
614 person authorized to make or object to the making of an
615 anatomical gift with respect to the individual or by a person to
616 whom the gift could pass under s. 765.5111.

617 Section 14. Section 765.5114, Florida Statutes, is created
618 to read:

619 765.5114 Rights and duties of procurement organizations and
620 others.-

621 (1) When a hospital refers an individual at or near death
622 to a procurement organization, the organization shall make a
623 reasonable search of the records of the statewide organ and
624 tissue donor registry and any donor registry that the
625 organization knows exists for the geographical area in which the
626 individual resides to ascertain whether the individual has made
627 an anatomical gift.

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

632 (3) When a hospital refers an individual at or near death
633 to a procurement organization, the organization may conduct any
634 reasonable examination necessary to ensure the medical
635 suitability of a part that is or could be the subject of an
636 anatomical gift for transplantation, therapy, research, or
637 education from a donor or a prospective donor. During the
638 examination period, measures necessary to ensure the medical

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639 suitability of the part may not be withdrawn unless the hospital
640 or procurement organization knows that the individual expressed
641 a contrary intent.

642 (4) Unless prohibited by law other than ss. 765.5101-
643 765.5125, at any time after a donor's death, the person to whom
644 a part passes under s. 765.5111 may conduct any reasonable
645 examination necessary to ensure the medical suitability of the
646 body or part for its intended purpose.

647 (5) Unless prohibited by law other than ss. 765.5101-
648 765.5125, an examination under subsection (3) or subsection (4)
649 may include an examination of all medical and dental records of
650 the donor or prospective donor.

651 (6) Upon the death of a minor who was a donor or had signed
652 a refusal, unless a procurement organization knows the minor is
653 emancipated, the procurement organization shall conduct a
654 reasonable search for the parents of the minor and provide the
655 parents with an opportunity to revoke or amend the anatomical
656 gift or revoke the refusal.

657 (7) Upon referral by a hospital under subsection (1), a
658 procurement organization shall make a reasonable search for any
659 person listed in s. 765.5109 having priority to make an
660 anatomical gift on behalf of a prospective donor. If a
661 procurement organization receives information that an anatomical
662 gift to any other person was made, amended, or revoked, it shall
663 promptly advise the other person of all relevant information.

664 (8) Subject to s. 765.5111(9) and s. 765.5123, the rights
665 of the person to whom a part passes under s. 765.5111 are
666 superior to the rights of all others with respect to the part.
667 The person may accept or reject an anatomical gift in whole or

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668 in part. Subject to the terms of the document of gift and ss.
669 765.5101-765.5125, a person who accepts an anatomical gift of an
670 entire body may allow embalming, burial, or cremation, and use
671 of remains in a funeral service. If the gift is of a part, the
672 person to whom the part passes under s. 765.5111, upon the death
673 of the donor and before embalming, burial, or cremation, shall
674 cause the part to be removed without unnecessary mutilation.

675 (9) Neither the physician who attends the decedent at death
676 nor the physician who determines the time of the decedent's
677 death may participate in the procedures for removing or
678 transplanting a part from the decedent.

679 (10) A physician or technician may remove a donated part
680 from the body of a donor that the physician or technician is
681 qualified to remove.

682 Section 15. Section 765.5115, Florida Statutes, is created
683 to read:

684 765.5115 Coordination of procurement and use.—Each hospital
685 in this state shall enter into agreements or affiliations with
686 procurement organizations for coordination of procurement and
687 use of anatomical gifts.

688 Section 16. Section 765.5117, Florida Statutes, is created
689 to read:

690 765.5117 Prohibited acts.—A person who, in order to obtain
691 financial gain, intentionally falsifies, forges, conceals,
692 defaces, or obliterates a document of gift, an amendment or
693 revocation of a document of gift, or a refusal commits a felony
694 of the third degree, punishable as provided in s. 775.082, s.
695 775.083, or s. 775.084.

696 Section 17. Section 765.5118, Florida Statutes, is created

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697 to read:

698 765.5118 Immunity.-

699 (1) A person who acts in accordance with ss. 765.5101-
700 765.5125 or with the applicable anatomical gift law of another
701 state, or attempts in good faith to do so, is not liable for
702 such an act in a civil action, criminal prosecution, or
703 administrative proceeding.

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

707 (3) In determining whether an anatomical gift has been
708 made, amended, or revoked under ss. 765.5101-765.5125, a person
709 may rely upon representations of an individual listed in s.
710 765.5109(1)(b), (c), (d), (e), (f), (g), or (h) relating to the
711 individual's relationship to the donor or prospective donor
712 unless the person knows that the representation is untrue.

713 Section 18. Section 765.5119, Florida Statutes, is created
714 to read:

715 765.5119 Law governing validity; choice of law as to
716 execution of a document of gift; presumption of validity.-

717 (1) A document of gift is valid if executed in accordance
718 with:

719 (a) Sections 765.5101-765.5125;

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

721 or

722 (c) The laws of the state or country where the person
723 making the anatomical gift was domiciled, has a place of
724 residence, or was a national at the time the document of gift
725 was executed.

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726 (2) If a document of gift is valid under this section, the
727 law of this state governs the interpretation of the document of
728 gift.

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

732 Section 19. Section 765.5155, Florida Statutes, is
733 transferred and renumbered as s. 765.5120, Florida Statutes.

734 Section 20. Section 765.51551, Florida Statutes, is
735 transferred and renumbered as 765.51201, Florida Statutes.

736 Section 21. Section 765.5121, Florida Statutes, is created
737 to read:

738 765.5121 Effect of an anatomical gift on an advance health
739 care directive.—

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

741 (a) "Advance health care directive" means a power of
742 attorney for health care or a record signed or authorized by a
743 prospective donor containing the prospective donor's direction
744 concerning a health care decision for the prospective donor.

745 (b) "Declaration" means a record signed by a prospective
746 donor specifying the circumstances under which life support
747 services may be withheld or withdrawn from the prospective
748 donor.

749 (c) "Health care decision" means any decision regarding the
750 health care of the prospective donor.

751 (2) If a prospective donor has a declaration or advance
752 health care directive and the terms of the declaration or
753 directive and the express or implied terms of a potential
754 anatomical gift are in conflict with regard to the

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

774 Section 22. Section 765.5122, Florida Statutes, is created
775 to read:

776 765.5122 Cooperation between medical examiners and
777 procurement organizations.-

778 (1) A medical examiner shall cooperate with procurement
779 organizations to maximize the opportunity to recover anatomical
780 gifts for the purpose of transplantation, therapy, research, or
781 education.

782 (2) If a medical examiner receives notice from a
783 procurement organization that an anatomical gift might be

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784 available or was made with respect to a decedent whose body is
785 under the jurisdiction of the medical examiner and a postmortem
786 examination is going to be performed, unless the medical
787 examiner denies recovery in accordance with s. 765.5123, the
788 medical examiner or designee shall conduct a postmortem
789 examination of the body or the part in a manner and within a
790 period compatible with its preservation for the purposes of the
791 gift.

792 (3) A part may not be removed from the body of a decedent
793 under the jurisdiction of a medical examiner for
794 transplantation, therapy, research, or education unless the part
795 is the subject of an anatomical gift. The body of a decedent
796 under the jurisdiction of the medical examiner may not be
797 delivered to a person for research or education unless the body
798 is the subject of an anatomical gift. This subsection does not
799 preclude a medical examiner from performing the medicolegal
800 investigation upon the body or parts of a decedent under the
801 jurisdiction of the medical examiner.

802 Section 23. Section 765.5123, Florida Statutes, is created
803 to read:

804 765.5123 Facilitation of an anatomical gift from a decedent
805 whose body is under the jurisdiction of a medical examiner.—

806 (1) Upon request of a procurement organization, a medical
807 examiner shall release to the procurement organization the name,
808 contact information, and available medical and social history of
809 a decedent whose body is under the jurisdiction of the medical
810 examiner. If the decedent's body or part is medically suitable
811 for transplantation, therapy, research, or education, the
812 medical examiner shall release postmortem examination results to

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813 the procurement organization. The procurement organization may
814 make a subsequent disclosure of the postmortem examination
815 results or other information received from the medical examiner
816 only if relevant to transplantation or therapy.

817 (2) The medical examiner may conduct a medicolegal
818 examination by reviewing all medical records, laboratory test
819 results, X rays, other diagnostic results, and other information
820 that any person possesses about a donor or prospective donor
821 whose body is under the jurisdiction of the medical examiner
822 which the medical examiner determines may be relevant to the
823 investigation.

824 (3) A person who has any information requested by a medical
825 examiner pursuant to subsection (2) shall provide that
826 information as expeditiously as possible to allow the medical
827 examiner to conduct the medicolegal investigation within a
828 period compatible with the preservation of parts for the purpose
829 of transplantation, therapy, research, or education.

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

840 (5) If an anatomical gift of a part from the decedent under
841 the jurisdiction of the medical examiner has been or might be

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842 made, but the medical examiner initially believes that the
843 recovery of the part could interfere with the postmortem
844 investigation into the decedent's cause or manner of death, the
845 medical examiner shall consult with the procurement organization
846 or physician or technician designated by the procurement
847 organization about the proposed recovery. After consultation,
848 the medical examiner may allow the recovery.

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

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

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

866 (b) Include the specific reasons in the records of the
867 medical examiner.

868 (c) Provide a record with the specific reasons to the
869 procurement organization.

870 (8) If the medical examiner or designee allows recovery of

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871 a part under subsection (4), subsection (5), or subsection (6),
872 the procurement organization shall, upon request, cause the
873 physician or technician who removes the part to provide the
874 medical examiner with a record describing the condition of the
875 part, a biopsy, a photograph, and any other information and
876 observations that would assist in the postmortem examination.

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

882 Section 24. Section 765.5124, Florida Statutes, is created
883 to read:

884 765.5124 Uniformity of application and construction.—In
885 applying and construing this uniform act, consideration must be
886 given to the need to promote uniformity of the law with respect
887 to its subject matter among states that enact it.

888 Section 25. Section 765.5125, Florida Statutes, is created
889 to read:

890 765.5125 Relation to Electronic Signatures in Global and
891 National Commerce Act.—Sections 765.5101-765.5125 modify, limit,
892 and supersede the Electronic Signatures in Global and National
893 Commerce Act, 15 U.S.C. ss. 7001 et seq., but do not modify,
894 limit, or supersede s. 101(a) of that act, 15 U.S.C. s. 7001, or
895 authorize electronic delivery of any of the notices described in
896 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

897 Section 26. Sections 765.510, 765.511, 765.512, 765.513,
898 765.514, 765.515, 765.516, and 765.517, Florida Statutes, are
899 repealed.

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900 Section 27. Paragraph (c) of subsection (2) of section
901 381.0041, Florida Statutes, is amended to read:

902 381.0041 Donation and transfer of human tissue; testing
903 requirements.—

904 (2) Notwithstanding the provisions of subsection (1),
905 written, informed consent to perform testing shall not be
906 required:

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

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

912 765.521 Donations as part of driver license or
913 identification card process.—

914 (1) The Agency for Health Care Administration and the
915 Department of Highway Safety and Motor Vehicles shall develop
916 and implement a program encouraging and allowing persons to make
917 anatomical gifts as a part of the process of issuing
918 identification cards and issuing and renewing driver licenses.
919 ~~The donor registration card distributed by the Department of~~
920 ~~Highway Safety and Motor Vehicles shall include the information~~
921 ~~required by the uniform donor card under s. 765.5105(1)(a)~~
922 ~~765.514 and such additional information as determined necessary~~
923 ~~by the department.~~ The department shall also develop and
924 implement a program to identify donors, which includes notations
925 on identification cards, driver licenses, and driver records or
926 such other methods as the department develops to clearly
927 indicate the individual's intent to donate the individual's
928 organs, tissues, or eyes. A notation on an individual's driver

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929 license or identification card that the individual intends to
930 donate organs, tissues, or eyes satisfies all requirements for
931 consent to organ or tissue donation. The Agency for Health Care
932 Administration shall provide the necessary supplies and forms
933 from funds appropriated from general revenue or contributions
934 from interested voluntary, nonprofit organizations. The
935 department shall provide the necessary recordkeeping system from
936 funds appropriated from general revenue. The Department of
937 Highway Safety and Motor Vehicles and the Agency for Health Care
938 Administration shall incur no liability in connection with the
939 performance of any acts authorized herein.

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

942 765.522 Duty of certain hospital administrators; liability
943 of hospital administrators, organ procurement organizations, eye
944 banks, and tissue banks.—

945 (2) Where, based on accepted medical standards, a hospital
946 patient is a suitable candidate for organ or tissue donation,
947 the hospital administrator or the hospital administrator's
948 designee shall, at or near the time of death, notify the
949 appropriate organ, eye, or tissue recovery program, which shall
950 access the organ and tissue donor registry created by s.

951 765.5120 ~~765.5155~~ to ascertain the existence of an entry in the
952 registry that has not been revoked, a donor card, or a document
953 executed by the decedent. In the absence of an entry in the
954 donor registry, donor card, organ donation sticker or organ
955 donation imprint on a driver's license, or other properly
956 executed document, the organ, eye, or tissue recovery program
957 shall request:

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

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

964
965 to consent to the gift of all or any part of the decedent's body
966 for any purpose specified in this part. Except as provided in s.
967 765.5109 ~~765.512~~, in the absence of actual notice of opposition,
968 consent need only be obtained from the person or persons in the
969 highest priority class reasonably available.

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

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