



548312

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/18/2009	.	
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	.	
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The Committee on Health Regulation (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

(2) "Anatomical gift" or "gift" means a donation of all or



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12 part of a human body to take effect after the donor's death and
13 to be used for transplantation, therapy, research, or education.

14 (3)~~(1)~~ "Bank" or "storage facility" means a facility
15 licensed, accredited, or approved under the laws of any state
16 for storage of human bodies or body parts thereof.

17 (4)~~(2)~~ "Death" means the absence of life as determined, in
18 accordance with currently accepted medical standards, by the
19 irreversible cessation of all respiration and circulatory
20 function, or as determined, in accordance with s. 382.009, by
21 the irreversible cessation of the functions of the entire brain,
22 including the brain stem.

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

25 (6) "Disinterested witness" means a witness other than a
26 person listed in s. 765.512(3) or other family member.

27 (7) "Document of gift" means any of the documents or
28 mechanisms used in making an anatomical gift under s. 765.514.

29 (8)~~(3)~~ "Donor" means an individual who makes an anatomical
30 a gift of all or part of his or her body.

31 (9) "Donor registry" means a database that contains records
32 of anatomical gifts and amendments to, or revocations of, such
33 gifts.

34 (10) "Eye bank" means an entity that is accredited by the
35 Eye Bank Association of America or otherwise regulated under
36 federal or state law to engage in the retrieval, screening,
37 testing, processing, storage, or distribution of human eye
38 tissue.

39 (11) "Guardian" means a person appointed pursuant to
40 chapter 744. The term does not include a guardian ad litem.



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41 ~~(12)-(4)~~ "Hospital" means a hospital licensed, accredited,
42 or approved under the laws of any state and includes a hospital
43 operated by the United States Government or a state, or a
44 subdivision thereof, although not required to be licensed under
45 state laws.

46 (13) "Identification card" means an official identification
47 card issued by a governmental entity, state agency, or
48 subdivision thereof.

49 (14) "Organ procurement organization" means an entity that
50 is designated as an organ procurement organization by the
51 Secretary of the United States Department of Health and Human
52 Services and that engages in the retrieval, screening, testing,
53 processing, storage, or distribution of human organs.

54 (15) "Part of the body" or "body part" means an organ, eye,
55 or tissue of a human being. The term does not include the whole
56 body.

57 ~~(16)-(5)~~ "Physician" or "surgeon" means a physician or
58 surgeon licensed to practice under chapter 458 or chapter 459 or
59 similar laws of any state. "Surgeon" includes dental or oral
60 surgeon.

61 (17) "Procurement" means any retrieval, recovery,
62 processing, storage, or distribution of human organs or tissues
63 for transplantation, therapy, research, or education.

64 (18) "Procurement organization" means an organ procurement
65 organization, eye bank, or tissue bank.

66 (19) "Reasonably available" means able to be contacted by a
67 procurement organization in a timely manner without undue
68 effort, and willing and able to act in a manner consistent with
69 existing medical protocols necessary for the making of an



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70 anatomical gift.

71 (20) "Record" means information that is inscribed on a
72 tangible medium or that is stored in an electronic or other
73 medium and is retrievable in perceivable form.

74 (21) "Sign" or "signed" means, with the present intent to
75 authenticate or adopt a record, to execute or adopt a tangible
76 symbol, or attach to or logically associate an electronic
77 symbol, sound, or process with the record.

78 (22) "Tissue bank" means an entity that is accredited by
79 the American Association of Tissue Banks or otherwise regulated
80 under federal or state law to engage in the retrieval,
81 screening, testing, processing, storage, or distribution of
82 human tissue.

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

85 765.512 Persons who may make an anatomical gift.-

86 (1) Any person who may make a will may make an anatomical
87 gift ~~give all or part of his or her body for any purpose~~
88 ~~specified in s. 765.513. The gift is effective upon the death of~~
89 ~~the donor.~~

90 (a) If the decedent makes an anatomical gift by one of the
91 methods listed in s. 765.514(1), and in the absence of actual
92 notice of contrary indications by the decedent, the document or
93 entry in the donor ~~organ and tissue~~ registry is legally
94 sufficient evidence of the decedent's informed consent to donate
95 an anatomical gift.

96 (b) An anatomical gift made by a qualified donor and not
97 revoked by the donor, as provided in s. 765.516, is irrevocable
98 after the donor's death. A family member, guardian,



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99 representative ad litem, or health care surrogate may not
100 modify, deny, or prevent a donor's wish or intent to make an
101 anatomical gift after the donor's death.

102 (4) A donee may not accept an anatomical gift if the donee
103 has actual notice of contrary indications by the donor or actual
104 notice that an anatomical a gift by a member of a class is
105 opposed by a member of a prior class.

106 (5) The person authorized by subsection (3) may make the
107 anatomical gift after the decedent's death or immediately before
108 the decedent's death.

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

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

113 (b) The decedent's medical provider, family, or a third
114 party to furnish medical records requested concerning the
115 decedent's medical and social history.

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

119 Section 3. Section 765.513, Florida Statutes, is amended to
120 read:

121 765.513 ~~Persons and entities that may become~~ Donees;
122 purposes for which anatomical gifts may be made.—

123 (1) The following persons or entities may become donees of
124 anatomical gifts of bodies or parts of them for the purposes
125 stated:

126 (a) ~~(1) Any~~ procurement organization or accredited hospital,
127 surgeon, or physician for medical or dental school, college, or



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128 university for education, or research, advancement of medical or
129 dental science, therapy, or transplantation.

130 ~~(2) Any accredited medical or dental school, college, or~~
131 ~~university for education, research, advancement of medical or~~
132 ~~dental science, or therapy.~~

133 ~~(3) Any bank or storage facility for medical or dental~~
134 ~~education, research, advancement of medical or dental science,~~
135 ~~therapy, or transplantation.~~

136 (b) (4) Any individual specified by name for therapy or
137 transplantation needed by him or her.

138 (2) If multiple purposes are set forth in the document of
139 gift but are not set forth in any priority order, the anatomical
140 gift shall be used first for transplantation or therapy, if
141 suitable. If the gift cannot be used for transplantation or
142 therapy, the gift may be used for research or education.

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

149 Section 4. Section 765.514, Florida Statutes, is amended to
150 read:

151 765.514 Manner of making anatomical gifts.-

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

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

155 (b) Registering online with the ~~organ and tissue~~ donor
156 registry.



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157 (c) Signifying an intent to donate on his or her driver's
158 license or identification card issued by the Department of
159 Highway Safety and Motor Vehicles. Revocation, suspension,
160 expiration, or cancellation of the driver's license or
161 identification card does not invalidate the gift.

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

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

170 (f) Expressing a wish to donate in a document other than a
171 will. The document must be signed by the donor in the presence
172 of two witnesses who shall sign the document in the donor's
173 presence. If the donor cannot sign, the document may be signed
174 for him or her at the donor's direction and in his or her
175 presence and the presence of two witnesses who must sign the
176 document in the donor's presence. Delivery of the document of
177 gift during the donor's lifetime is not necessary to make the
178 gift valid. The following form of written document is sufficient
179 for any person to make an anatomical gift ~~give all or part of~~
180 ~~his or her body~~ for the purposes of this part:

181 UNIFORM DONOR CARD

182
183 The undersigned hereby makes this anatomical gift, if medically
184 acceptable, to take effect on death. The words and marks below
185 indicate my desires:



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186 I give:
187 (a) any needed organs, tissues, or eyes;
188 (b) only the following organs, tissues, or eyes
189 ...[Specify the organs, tissues, or eyes]...
190 for the purpose of transplantation, therapy, medical research,
191 or education;
192 (c) my body for anatomical study if needed.
193 Limitations or special wishes, if any:
194 ...(If applicable, list specific donee;this must be arranged in
195 advance with the donee.)...
196
197 Signed by the donor and the following witnesses in the presence
198 of each other:
199
200 ...(Signature of donor)... ...(Date of birth of donor)...
201 ...(Date signed)... ...(City and State)...
202
203 ...(Witness)... ...(Witness)...
204 ...(Address)... ...(Address)...
205 (2) The anatomical gift may be made to a donee listed in s.
206 765.513, and the donee may be specified by name.
207 (3) Any anatomical gift by a health care surrogate
208 designated by the decedent pursuant to part II of this chapter
209 or a member of a class designated in s. 765.512(3) must be made
210 by a document signed by that person or made by that person's
211 witnessed telephonic discussion, telegraphic message, or other
212 recorded message.
213 Section 5. Section 765.515, Florida Statutes, is amended to
214 read:



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215 765.515 Delivery of donor document.—

216 (1) If an anatomical a gift is made pursuant to s. 765.521,
217 the completed donor registration card shall be delivered to the
218 Department of Highway Safety and Motor Vehicles and the
219 department must communicate the donor's intent to the ~~organ and~~
220 ~~tissue~~ donor registry, but delivery is not necessary to the
221 validity of the gift. If the donor withdraws the gift, the
222 records of the Department of Highway Safety and Motor Vehicles
223 must be updated to reflect such withdrawal and the department
224 must communicate the withdrawal to the ~~organ and tissue~~ donor
225 registry for the purpose of updating the registry.

226 (2) If an anatomical a gift is made by the donor to a
227 specified donee, the document of gift, other than a will, may be
228 delivered to the donee to expedite the appropriate procedures
229 immediately after death, but delivery is not necessary to the
230 validity of the gift. The ~~Such~~ document of gift may be deposited
231 in any hospital, bank, storage facility, or registry office that
232 accepts such documents for safekeeping or to facilitate the
233 donation of organs and tissue after death.

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

237 Section 6. Section 765.5155, Florida Statutes, is amended
238 to read:

239 765.5155 ~~Organ and tissue~~ Donor registry; education
240 program.—

241 (1) The Legislature finds that:

242 (a) There is a shortage of organ and tissue donors in this
243 state willing to provide the organs and tissue that could save



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244 lives or enhance the quality of life for many persons.

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

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

253 (2) The agency ~~for Health Care Administration~~ and the
254 Department of Highway Safety and Motor Vehicles shall jointly
255 contract for the operation of a ~~an organ and tissue~~ donor
256 registry and education program. The contractor shall be procured
257 by competitive solicitation pursuant to chapter 287,
258 notwithstanding any exemption in s. 287.057(5)(f). When awarding
259 the contract, priority shall be given to existing nonprofit
260 groups that are based within the state, have expertise working
261 with ~~organ and tissue~~ procurement organizations, have expertise
262 in conducting statewide organ and tissue donor public education
263 campaigns, and represent the needs of the organ and tissue
264 donation community in the state.

265 (3) The contractor shall be responsible for:

266 (a) The development, implementation, and maintenance of an
267 interactive web-based ~~organ and tissue~~ donor registry that,
268 through electronic means, allows for online organ donor
269 registration and the recording of organ and tissue donation
270 records submitted through the driver's license identification
271 program or through other sources.

272 1. The registry must be maintained in a manner that allows,



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273 through electronic and telephonic methods, immediate access to
274 organ and tissue donation records 24 hours a day, 7 days a week.

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

277 (b) A continuing program to educate and inform medical
278 professionals, law enforcement agencies and officers, other
279 state and local government employees, high school students,
280 minorities, and the public about the laws of this state relating
281 to anatomical gifts and the need for anatomical gifts.

282 1. Existing community resources, when available, must be
283 used to support the program and volunteers may assist the
284 program to the maximum extent possible.

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

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

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

294 2. The characteristics of donors as determined from
295 registry information submitted directly by the donors or by the
296 Department of Highway Safety and Motor Vehicles;

297 3. The annual dollar amount of voluntary contributions
298 received by the contractor;

299 4. A description of the educational campaigns and
300 initiatives implemented during the year and an evaluation of
301 their effectiveness in increasing enrollment on the registry;



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302 and

303 5. An analysis of Florida's registry compared with other
304 states' donor registries.

305 (4) Costs for the ~~organ and tissue~~ donor registry and
306 education program shall be paid by the agency ~~for Health Care~~
307 ~~Administration~~ from the funds deposited into the Health Care
308 Trust Fund pursuant to ss. 320.08047 and 322.08, which are
309 designated for maintaining the ~~organ and tissue~~ donor registry
310 and education program. In addition, the contractor may receive
311 and use voluntary contributions to help support the registry and
312 provide education.

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

316 Section 7. Section 765.51551, Florida Statutes, is amended
317 to read

318 765.51551 ~~Organ and tissue~~ Donor registry; public records
319 exemption.—

320 (1) Information held in the ~~organ and tissue~~ donor registry
321 which identifies a donor is confidential and exempt from s.
322 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

328 (b) Persons engaged in bona fide research if the person
329 agrees to:

330 1. Submit a research plan to the agency that specifies the



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331 exact nature of the information requested and the intended use
332 of the information;

333 2. Maintain the confidentiality of the records or
334 information if personal identifying information is made
335 available to the researcher;

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

338 4. Not directly or indirectly contact, for any purpose, any
339 donor or donee.

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

344 Section 8. Section 765.516, Florida Statutes, is amended to
345 read:

346 765.516 Donor amendment ~~of the terms of or the~~ revocation
347 of anatomical ~~the~~ gift.-

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

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

353 (b) An oral statement that is made in the presence of two
354 persons, one of whom is ~~must~~ not ~~be~~ a family member, and
355 communicated to the donor's family or attorney or to the donee.
356 An oral statement is effective only if the procurement
357 organization, transplant hospital, or physician or technician
358 has actual notice of the oral amendment or revocation before an
359 incision is made to the decedent's body or an invasive procedure



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360 to prepare the recipient has begun.

361 (c) A statement made during a terminal illness or injury
362 addressed to an attending physician, who must communicate the
363 revocation of the gift to the procurement organization ~~that is~~
364 ~~certified by the state.~~

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

366 (e) Removing his or her name from the ~~organ and tissue~~
367 donor registry.

368 (f) A later-executed document of gift which amends or
369 revokes a previous anatomical gift or portion of an anatomical
370 gift, either expressly or by inconsistency.

371 (g) By the destruction or cancellation of the document of
372 gift or the destruction or cancellation of that portion of the
373 document of gift used to make the gift with the intent to revoke
374 the gift.

375 (2) Any anatomical gift made by a will may also be amended
376 or revoked in the manner provided for the amendment or
377 revocation of wills or as provided in paragraph (1)(a)
378 ~~subsection (1).~~

379 Section 9. Section 765.517, Florida Statutes, is amended to
380 read:

381 765.517 Rights and duties at death.—

382 (1) The donee, pursuant to ~~as specified under the~~
383 ~~provisions of s. 765.515(2),~~ may accept or reject an anatomical
384 ~~the gift.~~ If the donee accepts a gift ~~of the entire body or a~~
385 ~~part of the body~~ to be used for research or education ~~scientific~~
386 purposes ~~other than a transplant,~~ the donee may authorize
387 embalming and the use of the body in funeral services, subject
388 to the terms of the gift. If the gift is of a part of the body,



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389 the donee shall cause the part to be removed without unnecessary
390 mutilation upon the death of the donor and before or after
391 embalming. After removal of the body part, custody of the
392 remainder of the body vests in the surviving spouse, next of
393 kin, or other persons under obligation to dispose of the body.

394 (2) The time of death shall be determined by a physician
395 who attends the donor at the donor's death or, if there is no
396 such physician, the physician who certifies the death. After
397 death, those physicians or the donor's primary care ~~and in the~~
398 ~~absence of other qualified personnel, this~~ physician may
399 participate in, but may ~~shall~~ not obstruct, the procedures to
400 preserve the donor's organs or tissues and may ~~shall~~ not be paid
401 or reimbursed for such participation ~~by~~, nor be associated with
402 or employed by, ~~a, an organ~~ procurement organization, ~~tissue~~
403 ~~bank, or eye bank.~~ These physicians may ~~This physician shall~~ not
404 participate in the procedures for removing or transplanting a
405 part. However, this subsection does not prevent a physician from
406 serving in a voluntary capacity on the board of directors of a
407 procurement organization or participating on any board, council,
408 commission, or similar body related to the organ and tissue
409 procurement system.

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



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

421 (b) If a properly executed ~~donor card or~~ document of gift
422 cannot be located or the deceased's consent is not listed in the
423 ~~organ and tissue~~ donor registry, a person specified in s.
424 765.512(2) or (3) has been located, has been notified of the
425 death, and has granted legal permission for the donation.

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

430 (5) A person who acts in good faith and ~~without negligence~~
431 in accord with the terms of this part or under the anatomical
432 gift laws of another state or a foreign country, or attempts in
433 good faith to do so, is not liable for damages in any civil
434 action, is not ~~or~~ subject to prosecution ~~for his or her acts~~ in
435 any criminal proceeding, and is not subject to discipline,
436 penalty, or liability in any administrative proceeding.

437 (6) The provisions of this part are subject to the laws of
438 this state prescribing powers and duties with respect to
439 autopsies.

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

443 (8) In determining whether an anatomical gift has been
444 made, amended, or revoked under this part, a person may rely
445 upon the representation of an individual listed in s. 765.512,
446 relating to the individual's relationship to the donor or



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447 prospective donor, unless the person knows that the
448 representation is untrue.

449 Section 10. Section 765.521, Florida Statutes, is amended
450 to read:

451 765.521 Donations as part of driver license or
452 identification card process.—

453 (1) The agency ~~for Health Care Administration~~ and the
454 Department of Highway Safety and Motor Vehicles shall develop
455 and implement a program encouraging and allowing persons to make
456 anatomical gifts as a part of the process of issuing
457 identification cards and issuing and renewing driver licenses.
458 The donor registration card distributed by the Department of
459 Highway Safety and Motor Vehicles shall include the information
460 required by the uniform donor card under s. 765.514 and such
461 additional information as determined necessary by the
462 department. The department shall also develop and implement a
463 program to identify donors, which includes notations on
464 identification cards, driver licenses, and driver records or
465 such other methods as the department develops to clearly
466 indicate the individual's intent to make an anatomical gift
467 ~~donate the individual's organs, tissues, or eyes~~. A notation on
468 an individual's driver license or identification card that the
469 individual intends to make an anatomical gift ~~donate organs,~~
470 ~~tissues, or eyes~~ satisfies all requirements for consent to organ
471 or tissue donation. The agency ~~for Health Care Administration~~
472 shall provide the necessary supplies and forms from funds
473 appropriated from general revenue or contributions from
474 interested voluntary, nonprofit organizations. The department
475 shall provide the necessary recordkeeping system from funds



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476 appropriated from general revenue. The Department of Highway
477 Safety and Motor Vehicles and the agency ~~for Health Care~~
478 ~~Administration~~ shall incur no liability in connection with the
479 performance of any acts authorized herein.

480 (2) The Department of Highway Safety and Motor Vehicles,
481 after consultation with and concurrence by the agency ~~for Health~~
482 ~~Care Administration~~, shall adopt rules to implement the
483 provisions of this section according to the provisions of
484 chapter 120.

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

488 Section 11. Section 765.522, Florida Statutes, is amended
489 to read:

490 765.522 Duty of ~~certain~~ hospital administrators; liability
491 of hospital administrators and, ~~organ~~ procurement organizations,
492 ~~eye banks, and tissue banks.-~~

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

496 (1) ~~(2)~~ If ~~Where~~, based on accepted medical standards, a
497 hospital patient is a suitable candidate for organ or tissue
498 donation, the hospital administrator or the hospital
499 administrator's designee shall, at or near the time of death,
500 notify the appropriate procurement organization ~~organ, eye, or~~
501 ~~tissue recovery program~~, which shall access the ~~organ and tissue~~
502 donor registry created by s. 765.5155 or any other donor
503 registry to ascertain the existence of an entry in the registry
504 which ~~that~~ has not been revoked, ~~a donor card~~, or a document of



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505 gift executed by the decedent. In the absence of an entry in the
506 donor registry, a document of gift ~~donor card, organ donation~~
507 ~~sticker or organ donation imprint on a driver's license, or~~
508 other properly executed document, the procurement organization
509 ~~organ, eye, or tissue recovery program~~ shall request:

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

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

515
516 to consent to the anatomical gift ~~of all or any part~~ of the
517 decedent's body for any purpose specified in this part. Except
518 as provided in s. 765.512, in the absence of actual notice of
519 opposition, consent need only be obtained from the person or
520 persons in the highest priority class reasonably available.

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

527 (4) The agency ~~for Health Care Administration~~ shall
528 establish rules and guidelines concerning the education of
529 individuals who may be designated to perform the request and the
530 procedures to be used in making the request. The agency is
531 authorized to adopt rules concerning the documentation of the
532 request, where such request is made.

533 (5) If a document of gift is valid under this section, the



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534 laws of this state govern the interpretation of the document of
535 gift.

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

539 (7) ~~(5)~~ There shall be no civil or criminal liability
540 against any ~~organ~~ procurement organization, ~~eye bank, or tissue~~
541 ~~bank~~ certified under s. 765.542, or against any hospital or
542 hospital administrator or designee who complies, ~~when complying~~
543 with the provisions of this part and agency ~~the rules of the~~
544 ~~agency for Health Care Administration~~ or if ~~when~~, in the
545 exercise of reasonable care, a request for organ donation is
546 inappropriate and the gift is not made according to this part
547 and agency ~~the rules of the agency for Health Care~~
548 ~~Administration.~~

549 (8) ~~(6)~~ The hospital administrator or a designee shall, at
550 or near the time of death of a potential ~~organ~~ donor, directly
551 notify the affiliated organ procurement organization ~~designated~~
552 ~~by the United States Department of Health and Human Services~~ of
553 the potential organ donor. The ~~This~~ organ procurement
554 organization must offer any organ from such a donor first to
555 patients on a Florida-based local or state organ sharing
556 transplant list. For the purpose of this subsection, the term
557 "transplant list" includes certain categories of national or
558 regional organ sharing for patients of exceptional need or
559 exceptional match, as approved or mandated by the Organ
560 Procurement and Transplantation Network, or its agent. This
561 notification may not be made to a tissue bank or eye bank in
562 lieu of the organ procurement organization unless the tissue



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563 bank or eye bank is also designated as an organ procurement
564 organization ~~by the United States Department of Health and Human~~
565 ~~Services.~~

566 Section 12. Subsections (1), (5), and (6) of section
567 765.53, Florida Statutes, are amended to read:

568 765.53 Organ Transplant Advisory Council; membership;
569 responsibilities.-

570 (1) ~~There is hereby created within the agency for Health~~
571 ~~Care Administration~~ A statewide technical Organ Transplant
572 Advisory Council is created within the agency, consisting of
573 twelve members who are physicians licensed under chapter 458 or
574 chapter 459, to represent the interests of the public and the
575 clients of the Department of Health or the agency. ~~The members~~
576 ~~shall be physicians licensed according to chapter 458 or chapter~~
577 ~~459.~~ A person employed by the agency may not be appointed as a
578 member of the council.

579 (5) Members of the council shall receive no compensation,
580 but shall be reimbursed for per diem and travel expenses by the
581 agency ~~for Health Care Administration~~ in accordance with ~~the~~
582 ~~provisions of~~ s. 112.061 while engaged in the performance of
583 their duties.

584 (6) The responsibilities of the council shall be to
585 recommend to the agency ~~for Health Care Administration~~
586 indications for adult and pediatric organ transplants. The
587 council shall also formulate guidelines and standards for organ
588 transplants and for the development of End Stage Organ Disease
589 and Tissue/Organ Transplant programs. The recommendations,
590 guidelines, and standards developed by the council are
591 applicable only to those health programs funded through the



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592 agency ~~for Health Care Administration.~~

593 Section 13. Section 765.541, Florida Statutes, is amended
594 to read:

595 765.541 Certification of procurement organizations ~~engaged~~
596 ~~in the practice of cadaveric organ and tissue procurement.~~—The
597 agency ~~for Health Care Administration~~ shall:

598 (1) Establish a program for the certification of
599 organizations, corporations ~~agencies~~, or other entities engaged
600 in the procurement of organs, tissues, and eyes for
601 transplantation. ~~†~~

602 (2) Adopt rules that set forth appropriate standards and
603 guidelines for the program in accordance with ss. 765.541-
604 765.546 and part II of chapter 408. These standards and
605 guidelines must be substantially based on the existing laws of
606 the Federal Government and this state and the existing standards
607 and guidelines of the United Network for Organ Sharing (UNOS),
608 the American Association of Tissue Banks (AATB), the South-
609 Eastern Organ Procurement Foundation (SEOPF), the North American
610 Transplant Coordinators Organization (NATCO), and the Eye Bank
611 Association of America (EBAA). In addition, the agency ~~for~~
612 ~~Health Care Administration~~ shall, before adopting these
613 standards and guidelines, seek input from all ~~organ~~ procurement
614 organizations, ~~tissue banks, and eye banks~~ based in this state. ~~†~~

615 (3) Collect, keep, and make available to the Governor and
616 the Legislature information regarding the numbers and
617 disposition of organs, ~~and~~ tissues, and eyes procured by each
618 certified procurement organization. ~~entity;†~~

619 (4) Monitor procurement organizations ~~participating~~
620 ~~facilities and agencies~~ for program compliance. ~~†~~ ~~and~~



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

623 Section 14. Section 765.542, Florida Statutes, is amended
624 to read:

625 765.542 Certification of ~~organ~~ procurement organizations,
626 ~~tissue banks, and eye banks.~~—

627 (1) The requirements of part II of chapter 408 apply to the
628 provision of services that require licensure pursuant to ss.
629 765.541-765.546 and part II of chapter 408 and to entities
630 licensed or certified by or applying for such licensure or
631 certification from the agency ~~for Health Care Administration~~
632 pursuant to ss. 765.541-765.546. A person ~~An organization,~~
633 ~~agency, or other entity~~ may not engage in the practice of organ
634 procurement in this state without being designated as an organ
635 procurement organization by the secretary of the United States
636 Department of Health and Human Services and being appropriately
637 certified by the agency ~~for Health Care Administration~~. ~~As used~~
638 ~~in this subsection, the term "procurement" includes the~~
639 ~~retrieval, processing, or distribution of human organs.~~ A
640 physician or organ procurement organization based outside this
641 state is exempt from these certification requirements if:

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

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

647 (2) A person ~~An organization, agency, or other entity~~ may
648 not engage in tissue procurement in this state unless it is
649 appropriately certified as a tissue bank by the agency ~~for~~



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650 ~~Health Care Administration. As used in this subsection, the term~~
651 ~~"procurement" includes any retrieval, processing, storage, or~~
652 ~~distribution of human tissue for transplantation.~~

653 (3) A person ~~An organization, agency, or other entity~~ may
654 not engage in the practice of eye procurement in this state
655 without being appropriately certified as an eye bank by the
656 agency ~~for Health Care Administration. As used in this~~
657 ~~subsection, the term "procurement" includes the retrieval,~~
658 ~~processing, or distribution of human eye tissue.~~ Funeral
659 directors or direct disposers who ~~that~~ retrieve eye tissue for
660 an eye bank certified under this subsection are exempt from the
661 certification requirements under this subsection.

662 (4) A limited certificate may be issued to a tissue bank or
663 eye bank, certifying only those components of procurement which
664 the bank has chosen to perform. The agency ~~for Health Care~~
665 ~~Administration~~ may issue a limited certificate if it determines
666 that the tissue bank or eye bank is adequately staffed and
667 equipped to operate in conformity with the rules adopted under
668 this section.

669 Section 15. Subsection (3) of section 765.543, Florida
670 Statutes, is amended to read:

671 765.543 Organ and Tissue Procurement and Transplantation
672 Advisory Board; creation; duties.-

673 (3) The board shall:

674 (a) Assist the agency ~~for Health Care Administration~~ in the
675 development of necessary professional qualifications, including,
676 but not limited to, the education, training, and performance of
677 persons engaged in the various facets of organ and tissue
678 procurement, processing, preservation, and distribution for



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679 transplantation;

680 (b) Assist the agency ~~for Health Care Administration~~ in
681 monitoring the appropriate and legitimate expenses associated
682 with organ and tissue procurement, processing, and distribution
683 for transplantation and developing methodologies to assure the
684 uniform statewide reporting of data to facilitate the accurate
685 and timely evaluation of the organ and tissue procurement and
686 transplantation system;

687 (c) Provide assistance to the Florida Medical Examiners
688 Commission in the development of appropriate procedures and
689 protocols to ensure the ~~assure~~ continued improvement in the
690 approval and release of potential ~~organ and tissue~~ donors by the
691 district medical examiners and associate medical examiners;

692 (d) Develop with and recommend to the agency ~~for Health~~
693 ~~Care Administration~~ the necessary procedures and protocols
694 required to assure that all residents of this state have
695 reasonable access to available organ and tissue transplantation
696 therapy and that residents of this state can be reasonably
697 assured that the statewide procurement transplantation system is
698 ~~will be~~ able to fulfill their organ and tissue requirements
699 within the limits of the available supply and according to the
700 severity of their medical condition and need; and

701 (e) Develop with and recommend to the agency ~~for Health~~
702 ~~Care Administration~~ any changes to the laws of this state or
703 administrative rules or procedures ~~required~~ to ensure ~~assure~~
704 that the statewide organ and tissue procurement and
705 transplantation system is ~~will be~~ able to function smoothly,
706 effectively, and efficiently, in accordance with the Federal
707 Anatomical Gift Act and in a manner that assures the residents



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708 of this state that no person or entity profits from the
709 altruistic voluntary donation of organs or tissues.

710 Section 16. Section 765.544, Florida Statutes, is amended
711 to read

712 765.544 Fees; organ and tissue donor education and
713 procurement.—

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

718 (a) An initial application fee of \$1,000 from organ
719 procurement organizations and tissue banks and \$500 from eye
720 banks.

721 (b) Annual fees to be used, in the following order of
722 priority, for the certification program, the advisory board,
723 maintenance of the ~~organ and tissue~~ donor registry, and the
724 organ and tissue donor education program ~~in the following~~
725 ~~amounts~~, which may not exceed \$35,000 per organization:

726 1. Each ~~general~~ organ procurement organization shall pay
727 the greater of \$1,000 or 0.25 percent of its total revenues
728 produced from procurement activity in this state by the
729 certificateholder during its most recently completed fiscal ~~year~~
730 or operational year.

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

736 3. Each eye bank shall pay the greater of \$500 or 0.25



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737 percent of its total revenues produced from procurement activity
738 in this state by the certificateholder during its most recently
739 completed fiscal ~~year~~ or operational year.

740 (2) The agency ~~for Health Care Administration~~ shall specify
741 by rule the administrative penalties for the purpose of ensuring
742 adherence to the standards of quality and practice required by
743 this chapter, part II of chapter 408, and applicable rules of
744 the agency for continued certification.

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

748 (b) Moneys deposited in the trust fund pursuant to this
749 section must be used exclusively for the implementation,
750 administration, and operation of the certification program and
751 the advisory board, for maintaining the ~~organ and tissue~~ donor
752 registry, and for organ and tissue donor education.

753 (4) As used in this section, the term "procurement activity
754 in this state" includes the bringing into this state for
755 processing, storage, distribution, or transplantation of organs
756 or tissues that are initially procured in another state or
757 country.

758 Section 17. Section 765.545, Florida Statutes, is amended
759 to read:

760 765.545 Physician supervision of cadaveric organ and tissue
761 procurement coordinators. ~~Organ~~ Procurement organizations,
762 ~~tissue banks, and eye banks~~ may employ coordinators, who are
763 registered nurses, physician's assistants, or other medically
764 trained personnel who meet the relevant standards for ~~organ~~
765 procurement organizations, ~~tissue banks, or eye banks~~ as adopted



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766 by the agency ~~for Health Care Administration~~ under s. 765.541,
767 to assist in the medical management of organ donors or in the
768 surgical procurement of cadaveric organs, tissues, or eyes for
769 transplantation or research. A coordinator who assists in the
770 medical management of organ donors or in the surgical
771 procurement of cadaveric organs, tissues, or eyes for
772 transplantation or research must do so under the direction and
773 supervision of a ~~licensed~~ physician medical director pursuant to
774 rules and guidelines ~~to be~~ adopted by the agency ~~for Health Care~~
775 ~~Administration~~. With the exception of organ procurement surgery,
776 this supervision may be indirect supervision. For purposes of
777 this section, the term "indirect supervision" means that the
778 medical director is responsible for the medical actions of the
779 coordinator, that the coordinator is operating under protocols
780 expressly approved by the medical director, and that the medical
781 director or his or her physician designee is always available,
782 in person or by telephone, to provide medical direction,
783 consultation, and advice in cases of organ, tissue, and eye
784 donation and procurement. Although indirect supervision is
785 authorized under this section, direct physician supervision is
786 to be encouraged when appropriate.

787 Section 18. Section 765.547, Florida Statutes, is created
788 to read:

789 765.547 Cooperation between medical examiner and
790 procurement organization.-

791 (1) A medical examiner and procurement organization shall
792 cooperate with each other in order to maximize opportunities to
793 recover anatomical gifts for the purpose of transplantation,
794 therapy, research, or education.



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795 (2) The Florida Medical Examiners Commission shall adopt
796 rules establishing cooperative responsibilities between medical
797 examiners and procurement organizations to facilitate and
798 expedite completion of the medical examiner's responsibilities
799 under chapter 406 in a manner that will maximize opportunities
800 to recover anatomical gifts.

801 (3) This part does not supersede any part of chapter 406
802 relating to medical examiners and the disposition of dead
803 bodies.

804 Section 19. Subsection (30) of section 408.802, Florida
805 Statutes, is amended to read:

806 408.802 Applicability.—The provisions of this part apply to
807 the provision of services that require licensure as defined in
808 this part and to the following entities licensed, registered, or
809 certified by the agency, as described in chapters 112, 383, 390,
810 394, 395, 400, 429, 440, 483, and 765:

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

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

815 408.820 Exemptions.—Except as prescribed in authorizing
816 statutes, the following exemptions shall apply to specified
817 requirements of this part:

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

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

822
823 ===== T I T L E A M E N D M E N T =====



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824 And the title is amended as follows:

825 Delete everything before the enacting clause
826 and insert:

827 A bill to be entitled

828 An act relating to anatomical gifts; amending s. 765.511, F.S.;
829 providing additional definitions; amending s. 765.512, F.S.;
830 conforming terms; amending s. 765.513, F.S.; revising the list
831 of donees that may accept anatomical gifts and the purposes for
832 which such gifts may be used; amending ss. 765.514, 765.515,
833 765.5155, and 765.51551, F.S.; conforming terms; amending s.
834 765.516, F.S.; revising provisions relating to a donor's
835 amendment or revocation of an anatomical gift; amending s.
836 765.517, F.S.; revising provisions relating to a donee's use of
837 an anatomical gift at the time of the donor's death; providing
838 liability protection for the person making a gift and for the
839 donor's estate; amending s. 765.521, F.S.; conforming terms;
840 amending s. 765.522, F.S.; providing that the laws of this state
841 govern the interpretation of a valid document of gift, and that
842 a document of gift is presumed to be valid; amending ss. 765.53,
843 765.541, 765.542, 765.543, 765.544, and 765.545, F.S.;
844 conforming terms; creating s. 765.547, F.S.; requiring medical
845 examiners and procurement organizations to cooperate and
846 maximize opportunities for organ donations; authorizing the
847 Florida Medical Examiners Commission to adopt rules; amending
848 ss. 408.802 and 408.820, F.S.; conforming terms; providing an
849 effective date.