

By the Committee on Health Regulation and Senator Oelrich

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

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

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

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

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

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

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

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

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

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

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

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

66 (12)~~(4)~~ "Hospital" means a hospital licensed, accredited,
67 or approved under the laws of any state and includes a hospital
68 operated by the United States Government or a state, or a
69 subdivision thereof, although not required to be licensed under
70 state laws.

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

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

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

82 (16)~~(5)~~ "Physician" or "surgeon" means a physician or
83 surgeon licensed to practice under chapter 458 or chapter 459 or
84 similar laws of any state. "Surgeon" includes dental or oral
85 surgeon.

86 (17) "Procurement" means any retrieval, recovery,
87 processing, storage, or distribution of human organs or tissues

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88 for transplantation, therapy, research, or education.

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

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

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

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

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

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

110 765.512 Persons who may make an anatomical gift.—

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

115 (a) If the decedent makes an anatomical gift by one of the
116 methods listed in s. 765.514(1), and in the absence of actual

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117 notice of contrary indications by the decedent, the document or
118 entry in the donor ~~organ and tissue~~ registry is legally
119 sufficient evidence of the decedent's informed consent to donate
120 an anatomical gift.

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

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

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

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

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

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

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

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

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146 765.513 ~~Persons and entities that may become~~ Donees;
147 purposes for which anatomical gifts may be made.—

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

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

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

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

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

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

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

174 Section 4. Section 765.514, Florida Statutes, is amended to

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175 read:

176 765.514 Manner of making anatomical gifts.-

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

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

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

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

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

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

195 (f) Expressing a wish to donate in a document other than a
196 will. The document must be signed by the donor in the presence
197 of two witnesses who shall sign the document in the donor's
198 presence. If the donor cannot sign, the document may be signed
199 for him or her at the donor's direction and in his or her
200 presence and the presence of two witnesses who must sign the
201 document in the donor's presence. Delivery of the document of
202 gift during the donor's lifetime is not necessary to make the
203 gift valid. The following form of written document is sufficient

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204 for any person to make an anatomical gift ~~give all or part of~~
 205 ~~his or her body~~ for the purposes of this part:

206 UNIFORM DONOR CARD

207
 208 The undersigned hereby makes this anatomical gift, if medically
 209 acceptable, to take effect on death. The words and marks below
 210 indicate my desires:

211 I give:

212 (a) any needed organs, tissues, or eyes;

213 (b) only the following organs, tissues, or eyes

214 ...[Specify the organs, tissues, or eyes]...

215 for the purpose of transplantation, therapy, medical research,
 216 or education;

217 (c) my body for anatomical study if needed.

218 Limitations or special wishes, if any:

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

221
 222 Signed by the donor and the following witnesses in the presence
 223 of each other:

224
 225 ... (Signature of donor) (Date of birth of donor) ...

226 ... (Date signed) (City and State) ...

227
 228 ... (Witness) (Witness) ...

229 ... (Address) (Address) ...

230 (2) The anatomical gift may be made to a donee listed in s.
 231 765.513, and the donee may be specified by name.

232 (3) Any anatomical gift by a health care surrogate

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233 designated by the decedent pursuant to part II of this chapter
234 or a member of a class designated in s. 765.512(3) must be made
235 by a document signed by that person or made by that person's
236 witnessed telephonic discussion, telegraphic message, or other
237 recorded message.

238 Section 5. Section 765.515, Florida Statutes, is amended to
239 read:

240 765.515 Delivery of donor document.—

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

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

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

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262 Section 6. Section 765.5155, Florida Statutes, is amended
263 to read:

264 765.5155 ~~Organ and tissue~~ Donor registry; education
265 program.—

266 (1) The Legislature finds that:

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

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

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

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

290 (3) The contractor shall be responsible for:

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

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

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

302 (b) A continuing program to educate and inform medical
303 professionals, law enforcement agencies and officers, other
304 state and local government employees, high school students,
305 minorities, and the public about the laws of this state relating
306 to anatomical gifts and the need for anatomical gifts.

307 1. Existing community resources, when available, must be
308 used to support the program and volunteers may assist the
309 program to the maximum extent possible.

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

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

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

319 2. The characteristics of donors as determined from

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320 registry information submitted directly by the donors or by the
321 Department of Highway Safety and Motor Vehicles;

322 3. The annual dollar amount of voluntary contributions
323 received by the contractor;

324 4. A description of the educational campaigns and
325 initiatives implemented during the year and an evaluation of
326 their effectiveness in increasing enrollment on the registry;
327 and

328 5. An analysis of Florida's registry compared with other
329 states' donor registries.

330 (4) Costs for the ~~organ and tissue~~ donor registry and
331 education program shall be paid by the agency ~~for Health Care~~
332 ~~Administration~~ from the funds deposited into the Health Care
333 Trust Fund pursuant to ss. 320.08047 and 322.08, which are
334 designated for maintaining the ~~organ and tissue~~ donor registry
335 and education program. In addition, the contractor may receive
336 and use voluntary contributions to help support the registry and
337 provide education.

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

341 Section 7. Section 765.51551, Florida Statutes, is amended
342 to read

343 765.51551 ~~Organ and tissue~~ Donor registry; public records
344 exemption.—

345 (1) Information held in the ~~organ and tissue~~ donor registry
346 which identifies a donor is confidential and exempt from s.
347 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

353 (b) Persons engaged in bona fide research if the person
354 agrees to:

355 1. Submit a research plan to the agency that specifies the
356 exact nature of the information requested and the intended use
357 of the information;

358 2. Maintain the confidentiality of the records or
359 information if personal identifying information is made
360 available to the researcher;

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

363 4. Not directly or indirectly contact, for any purpose, any
364 donor or donee.

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

369 Section 8. Section 765.516, Florida Statutes, is amended to
370 read:

371 765.516 Donor amendment ~~of the terms of~~ or ~~the~~ revocation
372 of anatomical ~~the~~ gift.-

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

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

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

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

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

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

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

396 (g) By the destruction or cancellation of the document of
397 gift or the destruction or cancellation of that portion of the
398 document of gift used to make the gift with the intent to revoke
399 the gift.

400 (2) Any anatomical gift made by a will may also be amended
401 or revoked in the manner provided for the amendment or
402 revocation of wills or as provided in paragraph (1)(a)
403 ~~subsection (1).~~

404 Section 9. Section 765.517, Florida Statutes, is amended to
405 read:

406 765.517 Rights and duties at death.—

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407 (1) The donee, pursuant to ~~as specified under the~~
408 ~~provisions of~~ s. 765.515(2), may accept or reject an anatomical
409 ~~the~~ gift. If the donee accepts a gift ~~of the entire body or a~~
410 ~~part of the body~~ to be used for research or education ~~scientific~~
411 ~~purposes other than a transplant~~, the donee may authorize
412 embalming and the use of the body in funeral services, subject
413 to the terms of the gift. If the gift is of a part of the body,
414 the donee shall cause the part to be removed without unnecessary
415 mutilation upon the death of the donor and before or after
416 embalming. After removal of the body part, custody of the
417 remainder of the body vests in the surviving spouse, next of
418 kin, or other persons under obligation to dispose of the body.

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

435 (3) The ~~organ~~ procurement organizations ~~organization,~~

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436 ~~tissue bank, or eye bank,~~ or hospital medical professionals
437 under the direction thereof, may perform any and all tests to
438 evaluate the deceased as a potential donor and any invasive
439 procedures on the deceased body in order to preserve the
440 potential donor's organs. These procedures do not include the
441 surgical removal of an organ or penetrating any body cavity,
442 specifically for the purpose of donation, until:

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

446 (b) If a properly executed ~~donor card or~~ document of gift
447 cannot be located or the deceased's consent is not listed in the
448 ~~organ and tissue~~ donor registry, a person specified in s.
449 765.512(2) or (3) has been located, has been notified of the
450 death, and has granted legal permission for the donation.

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

455 (5) A person who acts in good faith and ~~without negligence~~
456 in accord with the terms of this part or under the anatomical
457 gift laws of another state or a foreign country, or attempts in
458 good faith to do so, is not liable for damages in any civil
459 action, is not ~~or~~ subject to prosecution ~~for his or her acts~~ in
460 any criminal proceeding, and is not subject to discipline,
461 penalty, or liability in any administrative proceeding.

462 (6) The provisions of this part are subject to the laws of
463 this state prescribing powers and duties with respect to
464 autopsies.

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

468 (8) In determining whether an anatomical gift has been
469 made, amended, or revoked under this part, a person may rely
470 upon the representation of an individual listed in s. 765.512,
471 relating to the individual's relationship to the donor or
472 prospective donor, unless the person knows that the
473 representation is untrue.

474 Section 10. Section 765.521, Florida Statutes, is amended
475 to read:

476 765.521 Donations as part of driver license or
477 identification card process.—

478 (1) The agency ~~for Health Care Administration~~ and the
479 Department of Highway Safety and Motor Vehicles shall develop
480 and implement a program encouraging and allowing persons to make
481 anatomical gifts as a part of the process of issuing
482 identification cards and issuing and renewing driver licenses.
483 The donor registration card distributed by the Department of
484 Highway Safety and Motor Vehicles shall include the information
485 required by the uniform donor card under s. 765.514 and such
486 additional information as determined necessary by the
487 department. The department shall also develop and implement a
488 program to identify donors, which includes notations on
489 identification cards, driver licenses, and driver records or
490 such other methods as the department develops to clearly
491 indicate the individual's intent to make an anatomical gift
492 ~~donate the individual's organs, tissues, or eyes~~. A notation on
493 an individual's driver license or identification card that the

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494 individual intends to make an anatomical gift ~~donate organs,~~
495 ~~tissues, or eyes~~ satisfies all requirements for consent to organ
496 or tissue donation. The agency ~~for Health Care Administration~~
497 shall provide the necessary supplies and forms from funds
498 appropriated from general revenue or contributions from
499 interested voluntary, nonprofit organizations. The department
500 shall provide the necessary recordkeeping system from funds
501 appropriated from general revenue. The Department of Highway
502 Safety and Motor Vehicles and the agency ~~for Health Care~~
503 ~~Administration~~ shall incur no liability in connection with the
504 performance of any acts authorized herein.

505 (2) The Department of Highway Safety and Motor Vehicles,
506 after consultation with and concurrence by the agency ~~for Health~~
507 ~~Care Administration~~, shall adopt rules to implement the
508 provisions of this section according to the provisions of
509 chapter 120.

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

513 Section 11. Section 765.522, Florida Statutes, is amended
514 to read:

515 765.522 Duty of ~~certain~~ hospital administrators; liability
516 of hospital administrators and, ~~organ~~ procurement organizations,
517 ~~eye banks, and tissue banks.~~

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

521 (1) ~~(2)~~ If ~~Where~~, based on accepted medical standards, a
522 hospital patient is a suitable candidate for organ or tissue

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523 donation, the hospital administrator or the hospital
524 administrator's designee shall, at or near the time of death,
525 notify the appropriate procurement organization ~~organ, eye, or~~
526 ~~tissue recovery program~~, which shall access the ~~organ and tissue~~
527 donor registry created by s. 765.5155 or any other donor
528 registry to ascertain the existence of an entry in the registry
529 which ~~that~~ has not been revoked, ~~a donor card~~, or a document of
530 gift executed by the decedent. In the absence of an entry in the
531 donor registry, a document of gift ~~donor card, organ donation~~
532 ~~sticker or organ donation imprint on a driver's license~~, or
533 other properly executed document, the procurement organization
534 ~~organ, eye, or tissue recovery program~~ shall request:

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

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

540
541 to consent to the anatomical gift ~~of all or any part~~ of the
542 decedent's body for any purpose specified in this part. Except
543 as provided in s. 765.512, in the absence of actual notice of
544 opposition, consent need only be obtained from the person or
545 persons in the highest priority class reasonably available.

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

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552 (4) The agency ~~for Health Care Administration~~ shall
553 establish rules and guidelines concerning the education of
554 individuals who may be designated to perform the request and the
555 procedures to be used in making the request. The agency is
556 authorized to adopt rules concerning the documentation of the
557 request, where such request is made.

558 (5) If a document of gift is valid under this section, the
559 laws of this state govern the interpretation of the document of
560 gift.

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

564 (7)~~(5)~~ There shall be no civil or criminal liability
565 against any ~~organ~~ procurement organization, ~~eye bank, or tissue~~
566 ~~bank~~ certified under s. 765.542, or against any hospital or
567 hospital administrator or designee who complies, ~~when complying~~
568 with the provisions of this part and agency ~~the rules of the~~
569 ~~agency for Health Care Administration~~ or if ~~when~~, in the
570 exercise of reasonable care, a request for organ donation is
571 inappropriate and the gift is not made according to this part
572 and agency ~~the rules of the agency for Health Care~~
573 ~~Administration.~~

574 (8)~~(6)~~ The hospital administrator or a designee shall, at
575 or near the time of death of a potential ~~organ~~ donor, directly
576 notify the affiliated organ procurement organization ~~designated~~
577 ~~by the United States Department of Health and Human Services~~ of
578 the potential organ donor. The ~~This~~ organ procurement
579 organization must offer any organ from such a donor first to
580 patients on a Florida-based local or state organ sharing

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

591 Section 12. Subsections (1), (5), and (6) of section
592 765.53, Florida Statutes, are amended to read:

593 765.53 Organ Transplant Advisory Council; membership;
594 responsibilities.-

595 (1) ~~There is hereby created within the agency for Health~~
596 ~~Care Administration~~ A statewide technical Organ Transplant
597 Advisory Council is created within the agency, consisting of
598 twelve members who are physicians licensed under chapter 458 or
599 chapter 459, to represent the interests of the public and the
600 clients of the Department of Health or the agency. ~~The members~~
601 ~~shall be physicians licensed according to chapter 458 or chapter~~
602 ~~459.~~ A person employed by the agency may not be appointed as a
603 member of the council.

604 (5) Members of the council shall receive no compensation,
605 but shall be reimbursed for per diem and travel expenses by the
606 agency ~~for Health Care Administration~~ in accordance with ~~the~~
607 ~~provisions of~~ s. 112.061 while engaged in the performance of
608 their duties.

609 (6) The responsibilities of the council shall be to

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610 recommend to the agency ~~for Health Care Administration~~
 611 indications for adult and pediatric organ transplants. The
 612 council shall also formulate guidelines and standards for organ
 613 transplants and for the development of End Stage Organ Disease
 614 and Tissue/Organ Transplant programs. The recommendations,
 615 guidelines, and standards developed by the council are
 616 applicable only to those health programs funded through the
 617 agency ~~for Health Care Administration~~.

618 Section 13. Section 765.541, Florida Statutes, is amended
 619 to read:

620 765.541 Certification of procurement organizations ~~engaged~~
 621 ~~in the practice of cadaveric organ and tissue procurement.~~The
 622 agency ~~for Health Care Administration~~ shall:

623 (1) Establish a program for the certification of
 624 organizations, corporations ~~agencies~~, or other entities engaged
 625 in the procurement of organs, tissues, and eyes for
 626 transplantation. ~~†~~

627 (2) Adopt rules that set forth appropriate standards and
 628 guidelines for the program in accordance with ss. 765.541-
 629 765.546 and part II of chapter 408. These standards and
 630 guidelines must be substantially based on the existing laws of
 631 the Federal Government and this state and the existing standards
 632 and guidelines of the United Network for Organ Sharing (UNOS),
 633 the American Association of Tissue Banks (AATB), the South-
 634 Eastern Organ Procurement Foundation (SEOPF), the North American
 635 Transplant Coordinators Organization (NATCO), and the Eye Bank
 636 Association of America (EBAA). In addition, the agency ~~for~~
 637 ~~Health Care Administration~~ shall, before adopting these
 638 standards and guidelines, seek input from all ~~organ~~ procurement

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639 organizations, ~~tissue banks, and eye banks~~ based in this state. ~~;~~

640 (3) Collect, keep, and make available to the Governor and
641 the Legislature information regarding the numbers and
642 disposition of organs, and tissues, and eyes procured by each
643 certified procurement organization. ~~entity;~~

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

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

648 Section 14. Section 765.542, Florida Statutes, is amended
649 to read:

650 765.542 Certification of ~~organ~~ procurement organizations,
651 ~~tissue banks, and eye banks.~~—

652 (1) The requirements of part II of chapter 408 apply to the
653 provision of services that require licensure pursuant to ss.
654 765.541-765.546 and part II of chapter 408 and to entities
655 licensed or certified by or applying for such licensure or
656 certification from the agency ~~for Health Care Administration~~
657 pursuant to ss. 765.541-765.546. A person ~~An organization,~~
658 ~~agency, or other entity~~ may not engage in the practice of organ
659 procurement in this state without being designated as an organ
660 procurement organization by the secretary of the United States
661 Department of Health and Human Services and being appropriately
662 certified by the agency ~~for Health Care Administration~~. ~~As used~~
663 ~~in this subsection, the term "procurement" includes the~~
664 ~~retrieval, processing, or distribution of human organs.~~ A
665 physician or organ procurement organization based outside this
666 state is exempt from these certification requirements if:

667 (a) The organs are procured for an out-of-state patient who

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668 is listed on, or referred through, the United Network for Organ
669 Sharing System; and

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

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

678 (3) A person ~~An organization, agency, or other entity~~ may
679 not engage in the practice of eye procurement in this state
680 without being appropriately certified as an eye bank by the
681 agency ~~for Health Care Administration. As used in this~~
682 ~~subsection, the term "procurement" includes the retrieval,~~
683 ~~processing, or distribution of human eye tissue.~~ Funeral
684 directors or direct disposers who ~~that~~ retrieve eye tissue for
685 an eye bank certified under this subsection are exempt from the
686 certification requirements under this subsection.

687 (4) A limited certificate may be issued to a tissue bank or
688 eye bank, certifying only those components of procurement which
689 the bank has chosen to perform. The agency ~~for Health Care~~
690 ~~Administration~~ may issue a limited certificate if it determines
691 that the tissue bank or eye bank is adequately staffed and
692 equipped to operate in conformity with the rules adopted under
693 this section.

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

696 765.543 Organ and Tissue Procurement and Transplantation

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697 Advisory Board; creation; duties.-

698 (3) The board shall:

699 (a) Assist the agency ~~for Health Care Administration~~ in the
700 development of necessary professional qualifications, including,
701 but not limited to, the education, training, and performance of
702 persons engaged in the various facets of organ and tissue
703 procurement, processing, preservation, and distribution for
704 transplantation;

705 (b) Assist the agency ~~for Health Care Administration~~ in
706 monitoring the appropriate and legitimate expenses associated
707 with organ and tissue procurement, processing, and distribution
708 for transplantation and developing methodologies to assure the
709 uniform statewide reporting of data to facilitate the accurate
710 and timely evaluation of the organ and tissue procurement and
711 transplantation system;

712 (c) Provide assistance to the Florida Medical Examiners
713 Commission in the development of appropriate procedures and
714 protocols to ensure the ~~assure~~ continued improvement in the
715 approval and release of potential ~~organ and tissue~~ donors by the
716 district medical examiners and associate medical examiners;

717 (d) Develop with and recommend to the agency ~~for Health~~
718 ~~Care Administration~~ the necessary procedures and protocols
719 required to assure that all residents of this state have
720 reasonable access to available organ and tissue transplantation
721 therapy and that residents of this state can be reasonably
722 assured that the statewide procurement transplantation system is
723 ~~will be~~ able to fulfill their organ and tissue requirements
724 within the limits of the available supply and according to the
725 severity of their medical condition and need; and

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

735 Section 16. Section 765.544, Florida Statutes, is amended
736 to read

737 765.544 Fees; organ and tissue donor education and
738 procurement.—

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

743 (a) An initial application fee of \$1,000 from organ
744 procurement organizations and tissue banks and \$500 from eye
745 banks.

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

751 1. Each ~~general~~ organ procurement organization shall pay
752 the greater of \$1,000 or 0.25 percent of its total revenues
753 produced from procurement activity in this state by the
754 certificateholder during its most recently completed fiscal ~~year~~

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755 or operational year.

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

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

765 (2) The agency ~~for Health Care Administration~~ shall specify
766 by rule the administrative penalties for the purpose of ensuring
767 adherence to the standards of quality and practice required by
768 this chapter, part II of chapter 408, and applicable rules of
769 the agency for continued certification.

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

773 (b) Moneys deposited in the trust fund pursuant to this
774 section must be used exclusively for the implementation,
775 administration, and operation of the certification program and
776 the advisory board, for maintaining the ~~organ and tissue~~ donor
777 registry, and for organ and tissue donor education.

778 (4) As used in this section, the term "procurement activity
779 in this state" includes the bringing into this state for
780 processing, storage, distribution, or transplantation of organs
781 or tissues that are initially procured in another state or
782 country.

783 Section 17. Section 765.545, Florida Statutes, is amended

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784 to read:

785 765.545 Physician supervision of cadaveric organ and tissue
786 procurement coordinators. ~~Organ Procurement organizations,~~
787 ~~tissue banks, and eye banks~~ may employ coordinators, who are
788 registered nurses, physician's assistants, or other medically
789 trained personnel who meet the relevant standards for ~~organ~~
790 procurement organizations, ~~tissue banks, or eye banks~~ as adopted
791 by the agency ~~for Health Care Administration~~ under s. 765.541,
792 to assist in the medical management of organ donors or in the
793 surgical procurement of cadaveric organs, tissues, or eyes for
794 transplantation or research. A coordinator who assists in the
795 medical management of organ donors or in the surgical
796 procurement of cadaveric organs, tissues, or eyes for
797 transplantation or research must do so under the direction and
798 supervision of a ~~licensed~~ physician medical director pursuant to
799 rules and guidelines ~~to be~~ adopted by the agency ~~for Health Care~~
800 ~~Administration~~. With the exception of organ procurement surgery,
801 this supervision may be indirect supervision. For purposes of
802 this section, the term "indirect supervision" means that the
803 medical director is responsible for the medical actions of the
804 coordinator, that the coordinator is operating under protocols
805 expressly approved by the medical director, and that the medical
806 director or his or her physician designee is always available,
807 in person or by telephone, to provide medical direction,
808 consultation, and advice in cases of organ, tissue, and eye
809 donation and procurement. Although indirect supervision is
810 authorized under this section, direct physician supervision is
811 to be encouraged when appropriate.

812 Section 18. Section 765.547, Florida Statutes, is created

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813 to read:

814 765.547 Cooperation between medical examiner and
815 procurement organization.-

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

820 (2) The Florida Medical Examiners Commission shall adopt
821 rules establishing cooperative responsibilities between medical
822 examiners and procurement organizations to facilitate and
823 expedite completion of the medical examiner's responsibilities
824 under chapter 406 in a manner that will maximize opportunities
825 to recover anatomical gifts.

826 (3) This part does not supersede any part of chapter 406
827 relating to medical examiners and the disposition of dead
828 bodies.

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

831 408.802 Applicability.—The provisions of this part apply to
832 the provision of services that require licensure as defined in
833 this part and to the following entities licensed, registered, or
834 certified by the agency, as described in chapters 112, 383, 390,
835 394, 395, 400, 429, 440, 483, and 765:

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

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

840 408.820 Exemptions.—Except as prescribed in authorizing
841 statutes, the following exemptions shall apply to specified

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842 requirements of this part:

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

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

847