

By the Committees on Judiciary; and 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) "Department" means the Department of Highway Safety and Motor Vehicles.

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

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

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

(10) "Donor registry" means a database that contains

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59 records of anatomical gifts and amendments to, or revocations
60 of, such gifts.

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

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

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

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

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

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

84 (17)~~(5)~~ "Physician" or "surgeon" means a physician or
85 surgeon licensed to practice under chapter 458 or chapter 459 or
86 similar laws of any state. "Surgeon" includes dental or oral
87 surgeon.

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

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

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

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

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

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

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

112 765.512 Persons who may make an anatomical gift.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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175 such restrictions are ~~hereby declared~~ void and unenforceable.

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

178 765.514 Manner of making anatomical gifts.—

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

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

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

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

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

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

197 (f) Expressing a wish to donate in a document other than a
198 will. The document must be signed by the donor in the presence
199 of two witnesses who shall sign the document in the donor's
200 presence. If the donor cannot sign, the document may be signed
201 for him or her at the donor's direction and in his or her
202 presence and the presence of two witnesses who must sign the
203 document in the donor's presence. Delivery of the document of

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204 gift during the donor's lifetime is not necessary to make the
 205 gift valid. The following form of written document is sufficient
 206 for any person to make an anatomical gift ~~give all or part of~~
 207 ~~his or her body~~ for the purposes of this part:

208 UNIFORM DONOR CARD

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

213 I give:

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

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

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

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

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

220 Limitations or special wishes, if any:

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

223
 224 Signed by the donor and the following witnesses in the presence
 225 of each other:

226
 227 ...(Signature of donor)... ...(Date of birth of donor)...

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

229
 230 ...(Witness)... ...(Witness)...

231 ...(Address)... ...(Address)...

232 (2) The anatomical gift may be made to a donee listed in s.

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233 765.513, and the donee may be specified by name.

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

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

242 765.515 Delivery of donor document.—

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

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

261 (3) At the request of any interested party upon or after

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262 the donor's death, the person in possession shall produce the
263 document of gift for examination.

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

266 765.5155 ~~Organ and tissue~~ Donor registry; education
267 program.—

268 (1) The Legislature finds that:

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

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

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

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

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291 donation community in the state.

292 (3) The contractor shall be responsible for:

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

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

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

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

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

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

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

319 1. The number of donors on the registry and an analysis of

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320 the registration rates by location and method of donation;

321 2. The characteristics of donors as determined from
322 registry information submitted directly by the donors or by the
323 Department of Highway Safety and Motor Vehicles;

324 3. The annual dollar amount of voluntary contributions
325 received by the contractor;

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

330 5. An analysis of Florida's registry compared with other
331 states' donor registries.

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

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

343 Section 7. Section 765.51551, Florida Statutes, is amended
344 to read

345 765.51551 ~~Organ and tissue~~ Donor registry; public records
346 exemption.—

347 (1) Information held in the ~~organ and tissue~~ donor registry
348 which identifies a donor is confidential and exempt from s.

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349 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

355 (b) Persons engaged in bona fide research if the person
356 agrees to:

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

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

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

365 4. Not directly or indirectly contact, for any purpose, any
366 donor or donee.

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

371 Section 8. Section 765.516, Florida Statutes, is amended to
372 read:

373 765.516 Donor amendment ~~of the terms of~~ or ~~the~~ revocation
374 of anatomical ~~the~~ gift.—

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

377 (a) The execution and delivery to the donee of a signed

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378 statement witnessed by at least two adults, at least one of whom
379 is a disinterested witness.

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

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

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

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

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

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

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

406 Section 9. Section 765.517, Florida Statutes, is amended to

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407 read:

408 765.517 Rights and duties at death.—

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

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

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436 procurement system.

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

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

448 (b) If a properly executed ~~donor card or document~~ of gift
449 cannot be located or the deceased's consent is not listed in the
450 ~~organ and tissue~~ donor registry, a person specified in s.
451 765.512(2) or (3) has been located, has been notified of the
452 death, and has granted legal permission for the donation.

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

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

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465 ~~eriminal proceeding.~~

466 (6) The provisions of this part are subject to the laws of
467 this state prescribing powers and duties with respect to
468 autopsies.

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

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

478 Section 10. Section 765.521, Florida Statutes, is amended
479 to read:

480 765.521 Donations as part of driver license or
481 identification card process.—

482 (1) The agency ~~for Health Care Administration~~ and the
483 Department of Highway Safety and Motor Vehicles shall develop
484 and implement a program encouraging and allowing persons to make
485 anatomical gifts as a part of the process of issuing
486 identification cards and issuing and renewing driver licenses.
487 The donor registration card distributed by the Department of
488 Highway Safety and Motor Vehicles shall include the information
489 required by the uniform donor card under s. 765.514 and such
490 additional information as determined necessary by the
491 department. The department shall also develop and implement a
492 program to identify donors, which includes notations on
493 identification cards, driver licenses, and driver records or

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494 such other methods as the department develops to clearly
495 indicate the individual's intent to make an anatomical gift
496 ~~donate the individual's organs, tissues, or eyes~~. A notation on
497 an individual's driver license or identification card that the
498 individual intends to make an anatomical gift ~~donate organs,~~
499 ~~tissues, or eyes~~ satisfies all requirements for consent to organ
500 or tissue donation. The agency ~~for Health Care Administration~~
501 shall provide the necessary supplies and forms from funds
502 appropriated from general revenue or contributions from
503 interested voluntary, nonprofit organizations. The department
504 shall provide the necessary recordkeeping system from funds
505 appropriated from general revenue. The Department of Highway
506 Safety and Motor Vehicles and the agency ~~for Health Care~~
507 ~~Administration~~ shall incur no liability in connection with the
508 performance of any acts authorized herein.

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

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

517 Section 11. Section 765.522, Florida Statutes, is amended
518 to read:

519 765.522 Duty of ~~certain~~ hospital administrators; liability
520 of hospital administrators and, organ ~~organ~~ procurement organizations,
521 ~~eye banks, and tissue banks.~~

522 (1) ~~When used in this section, "hospital" means any~~

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523 ~~establishment licensed under chapter 395 except psychiatric and~~
 524 ~~rehabilitation hospitals.~~

525 (1) ~~(2)~~ If ~~Where~~, based on accepted medical standards, a
 526 hospital patient is a suitable candidate for organ or tissue
 527 donation, the hospital administrator or the hospital
 528 administrator's designee shall, at or near the time of death,
 529 notify the appropriate procurement organization ~~organ, eye, or~~
 530 ~~tissue recovery program~~, which shall access the ~~organ and tissue~~
 531 donor registry created by s. 765.5155 or any other donor
 532 registry to ascertain the existence of an entry in the registry
 533 which ~~that~~ has not been revoked, ~~a donor card~~, or a document of
 534 gift executed by the decedent. In the absence of an entry in the
 535 donor registry, a document of gift ~~donor card, organ donation~~
 536 ~~sticker or organ donation imprint on a driver's license~~, or
 537 other properly executed document, the procurement organization
 538 ~~organ, eye, or tissue recovery program~~ shall request:

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

541 (b) If the patient does not have a surrogate, or the
 542 surrogate is not reasonably available, any of the persons
 543 specified in s. 765.512(3), in the order and manner listed,
 544
 545 to consent to the anatomical gift ~~of all or any part~~ of the
 546 decedent's body for any purpose specified in this part. Except
 547 as provided in s. 765.512, in the absence of actual notice of
 548 opposition, consent need only be obtained from the person or
 549 persons in the highest priority class reasonably available.

550 (3) A document of gift is valid if ~~made pursuant to a~~
 551 ~~request required by this section shall be executed~~ in accordance

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552 with this part or the laws of the state or country where it was
553 executed and where the person making the anatomical gift was
554 domiciled, has a place of residence, or was a citizen at the
555 time the document of gift was executed pursuant to s. 765.514.

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

562 (5) If a document of gift is valid under this section, the
563 laws of this state govern the interpretation of the document of
564 gift.

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

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

578 (8)~~(6)~~ The hospital administrator or a designee shall, at
579 or near the time of death of a potential ~~organ~~ donor, directly
580 notify the affiliated organ procurement organization ~~designated~~

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581 ~~by the United States Department of Health and Human Services of~~
582 the potential organ donor. The ~~This~~ organ procurement
583 organization must offer any organ from such a donor first to
584 patients on a Florida-based local or state organ sharing
585 transplant list. For the purpose of this subsection, the term
586 "transplant list" includes certain categories of national or
587 regional organ sharing for patients of exceptional need or
588 exceptional match, as approved or mandated by the Organ
589 Procurement and Transplantation Network, or its agent. This
590 notification may not be made to a tissue bank or eye bank in
591 lieu of the organ procurement organization unless the tissue
592 bank or eye bank is also designated as an organ procurement
593 organization ~~by the United States Department of Health and Human~~
594 ~~Services.~~

595 Section 12. Subsections (1), (5), and (6) of section
596 765.53, Florida Statutes, are amended to read:

597 765.53 Organ Transplant Advisory Council; membership;
598 responsibilities.-

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

608 (5) Members of the council shall receive no compensation,
609 but shall be reimbursed for per diem and travel expenses by the

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610 agency ~~for Health Care Administration~~ in accordance with ~~the~~
611 ~~provisions of~~ s. 112.061 while engaged in the performance of
612 their duties.

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

622 Section 13. Section 765.541, Florida Statutes, is amended
623 to read:

624 765.541 Certification of procurement organizations; agency
625 responsibilities ~~engaged in the practice of cadaveric organ and~~
626 ~~tissue procurement.~~—The agency ~~for Health Care Administration~~
627 shall:

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

632 (2) Adopt rules that set forth appropriate standards and
633 guidelines for the program in accordance with ss. 765.541-
634 765.546 and part II of chapter 408. These standards and
635 guidelines must be substantially based on the existing laws of
636 the Federal Government and this state and the existing standards
637 and guidelines of the United Network for Organ Sharing (UNOS),
638 the American Association of Tissue Banks (AATB), the South-

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639 Eastern Organ Procurement Foundation (SEOPF), the North American
640 Transplant Coordinators Organization (NATCO), and the Eye Bank
641 Association of America (EBAA). In addition, the agency ~~for~~
642 ~~Health Care Administration~~ shall, before adopting these
643 standards and guidelines, seek input from all ~~organ~~ procurement
644 organizations, ~~tissue banks, and eye banks~~ based in this state. ~~;~~

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

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

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

653 Section 14. Section 765.542, Florida Statutes, is amended
654 to read:

655 765.542 Requirements to engage in organ, tissue, or eye
656 ~~Certification of organ procurement organizations, tissue banks,~~
657 ~~and eye banks.~~—

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

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668 certified by the agency ~~for Health Care Administration. As used~~
669 ~~in this subsection, the term "procurement" includes the~~
670 ~~retrieval, processing, or distribution of human organs. A~~
671 physician or organ procurement organization based outside this
672 state is exempt from these certification requirements if:

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

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

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

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

693 (4) A limited certificate may be issued to a tissue bank or
694 eye bank, certifying only those components of procurement which
695 the bank has chosen to perform. The agency ~~for Health Care~~
696 ~~Administration~~ may issue a limited certificate if it determines

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697 that the tissue bank or eye bank is adequately staffed and
698 equipped to operate in conformity with the rules adopted under
699 this section.

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

702 765.543 Organ and Tissue Procurement and Transplantation
703 Advisory Board; creation; duties.—

704 (3) The board shall:

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

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

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

723 (d) Develop with and recommend to the agency ~~for Health~~
724 ~~Care Administration~~ the necessary procedures and protocols
725 required to assure that all residents of this state have

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

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

741 Section 16. Section 765.544, Florida Statutes, is amended
742 to read

743 765.544 Fees; organ and tissue donor education and
744 procurement.—

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

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

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

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

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

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

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

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

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

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

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

789 Section 17. Section 765.545, Florida Statutes, is amended
790 to read:

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

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813 in person or by telephone, to provide medical direction,
814 consultation, and advice in cases of organ, tissue, and eye
815 donation and procurement. Although indirect supervision is
816 authorized under this section, direct physician supervision is
817 to be encouraged when appropriate.

818 Section 18. Section 765.547, Florida Statutes, is created
819 to read:

820 765.547 Cooperation between medical examiner and
821 procurement organization.—

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

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

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

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

837 408.802 Applicability.—The provisions of this part apply to
838 the provision of services that require licensure as defined in
839 this part and to the following entities licensed, registered, or
840 certified by the agency, as described in chapters 112, 383, 390,
841 394, 395, 400, 429, 440, 483, and 765:

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

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

846 408.820 Exemptions.—Except as prescribed in authorizing
847 statutes, the following exemptions shall apply to specified
848 requirements of this part:

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

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

853