

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1087 Procurement Activities of For-profit Eye Banks

**SPONSOR(S):** McClure and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Facilities Subcommittee	13 Y, 4 N	Morris	Lloyd
2) Health & Human Services Committee			

### SUMMARY ANALYSIS

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplantation in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury. Federal and state law prohibit the purchase and sale of human organs, including tissue, eyes, and corneas.

Eye banks are certified by the Agency for Health Care Administration (AHCA) and engage in screening, testing, retrieving, processing, distributing, or storing human eye tissue. AHCA currently certifies 25 eye banks; three located in Florida and 22 located in other states. Two Florida eye banks are non-profit entities and one is a for-profit entity.

HB 1087 prohibits for-profit entities from obtaining certification as eye banks and from collecting any eye, cornea, eye tissue, or corneal tissue. The bill provides exceptions for hospitals, ambulatory surgical centers, and district medical examiners.

The bill has an insignificant, negative fiscal impact on AHCA. The bill has no impact to local governments.

The bill provides an effective date of July 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### **Organ and Tissue Donation**

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient). Transplantation in such cases is necessary because the recipient's organ has failed or has been damaged by disease or injury. Transplantable organs include the kidneys, liver, heart, lungs, pancreas and intestine.<sup>1</sup> Transplantable tissue include skin used as a temporary dressing for burns, serious abrasions and other exposed areas; heart valves used to replace defective valves; tendons used to repair torn ligaments on knees or other joints; veins used in cardiac by-pass surgery; corneas used to restore sight; and bone used in orthopedic surgery to facilitate healing of fractures or prevent amputation.<sup>2</sup>

A single person can save up to eight lives through organ donation, and dozens more lives may be improved through tissue donation.<sup>3</sup> While most organ and tissue donations occur after the donor has died, some organs and tissues can be donated while the donor is alive, such as a kidney or part of a liver or lung.<sup>4</sup> There are about as many living donors every year as there are deceased donors.<sup>5</sup>

Despite advances in medicine and technology, and increased awareness of organ donation and transplantation, more donors are needed to meet the demand for transplants.<sup>6</sup> As of January 2020, there are more than 112,000 children and adults,<sup>7</sup> including over 5,000 Floridians, on the waiting list to receive an organ.<sup>8</sup> Over 39,000 organ transplants were performed in 2019 with organs from more than 19,000 donors.<sup>9</sup>

##### Organ Donation Network

Established by the National Organ Transplant Act (NOTA) of 1984, the Organ Procurement and Transplantation Network (OPTN) is a public-private partnership that links all professionals involved in the nation's donation and transplant system.<sup>10</sup> The United Network for Organ Sharing (UNOS), a private, non-profit organization based in Richmond, Virginia, serves as the OPTN under contract with the U.S. Department of Health and Human Services.<sup>11</sup> UNOS coordinates how donor organs are matched and allocated to patients on the waiting list.<sup>12</sup> Non-profit, federally designated organ procurement organizations (OPOs) work closely with UNOS, hospitals, and transplant centers to facilitate the organ donation and transplantation process,<sup>13</sup> including conducting a thorough medical and social history of the potential donor to help determine the suitability of his or her organs for

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<sup>1</sup> Donate Life Florida, *Frequently Asked Questions*, <https://www.donateliflorida.org/categories/donation/> (last visited March 16, 2021).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *How Organ Donation Works*, <https://organdonor.gov/about/process.html> (last visited March 16, 2021).

<sup>5</sup> Id.

<sup>6</sup> Organ Procurement and Transplantation Network, U.S. Department of Health & Human Services, <https://optn.transplant.hrsa.gov/> (last visited March 16, 2021).

<sup>7</sup> Id.

<sup>8</sup> *Supra*, note 1.

<sup>9</sup> Id.

<sup>10</sup> U.S. Department of Health and Human Services, *Organ Procurement and Transplantation Network – About the OPTN*, <https://optn.transplant.hrsa.gov/governance/about-the-optn/> (last visited March 16, 2021).

<sup>11</sup> Id.

<sup>12</sup> U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *The Organ Transplant Process*, <https://organdonor.gov/about/process/transplant-process.html> (last visited March 16, 2021).

<sup>13</sup> Donate Life Florida, *Organ Procurement Organizations and Transplant Centers*, <https://www.donateliflorida.org/local-resources/transplant-centers/> (last visited March 16, 2021).

transplantation.<sup>14</sup> The NOTA prohibits human organs, including tissue, eyes, and corneas, from being bought or sold.<sup>15</sup>

### State Regulation of Eye Banks

Procurement organizations are OPOs, eye banks, or tissue banks that are certified by the Agency for Health Care Administration (AHCA)<sup>16</sup> which engage in the retrieval, recovery, processing, storage, or distribution of human organs or tissues for transplantation, therapy, research, or education.<sup>17</sup> Currently, 162 procurement organizations are certified by AHCA, 25 of which are eye banks, 133 are tissue banks, and four are OPOs.<sup>18</sup>

Of the 25 eye banks certified by AHCA, three are physically located in Florida and the remaining 22 are located outside of the state.<sup>19</sup> Of the three eye banks physically located in Florida, two are not-for-profit corporations and one is a for-profit corporation.<sup>20</sup> Of the 22 out-of-state eye banks, 12 are not-for-profit and 10 are for-profit.<sup>21</sup>

Florida's three eye banks are located in Miami, Tampa, and Orlando. Lions Eye Bank and Lions Eye Institute are located in Miami and Tampa, respectively, while CorneaGen is located in Orlando. The certified, out-of-state eye banks are located in Alabama, California, Illinois, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, and Washington.<sup>22</sup>

Florida law prohibits the buying, selling, and transfer of human organs, tissue, and body parts, including eyes and corneas, by any person, violation of which is a second degree felony,<sup>23</sup> punishable by up to 30 years in prison and/or a fine up to \$10,000.<sup>24</sup> The interaction of these provisions with the OPO certification statute,<sup>25</sup> which does not ban for-profit entities from becoming certified, is unclear. Because organ procurement can involve distribution – or transfer – of organs, it appears this provision would prevent certification of for-profit procurement organizations if they receive valuable consideration for the distribution (transfer).

### Trends in the Eye Banking Industry

Recently, the market for corneal tissue procurement, transport, and surgeon partnership has shifted from local, community-based eye banks to larger companies.<sup>26</sup> Some of these larger companies are represented by not-for-profit corporations affiliated with for-profit “daughter” companies. In partnership with each other, these organizations play defined roles in the eye and cornea procurement process, with the non-profit organization recovering the tissue while the for-profit organization processes, evaluates, and distributes the tissues to cornea surgeons.<sup>27</sup>

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<sup>14</sup> Organ Procurement and Transplantation Network, U.S. Department of Health & Human Services, *The Basic Path of Donation*, <https://optn.transplant.hrsa.gov/learn/about-donation/the-basic-path-of-donation/> (last visited March 16, 2021).

<sup>15</sup> 42 U.S.C. 274e.

<sup>16</sup> Agency for Health Care Administration, Agency Analysis of 2021 House Bill 1087, p. 2 (March 3, 2021). See also s. 765.511, F.S.

<sup>17</sup> S. 765.511(15), F.S.

<sup>18</sup> *Supra*, note 16, p. 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> S. 873.01, F.S.

<sup>24</sup> Ss. 775.082, 775.083, and 775.084, F.S.

<sup>25</sup> S. 765.542, F.S.

<sup>26</sup> Majid Moshirfar, Jackson L. Goldberg, et al., *A paradigm shift in eye banking: how new models are challenging the status quo*, U.S. National Library of Medicine, National Institutes of Health (Dec. 27, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6311318/> (last visited March 16, 2021).

<sup>27</sup> *Id.*

## **Effect of Proposed Changes**

HB 1087 prohibits for-profit entities from procuring, directly or indirectly, any eye, cornea, eye tissue, or corneal tissue. The bill provides exceptions for hospitals, ambulatory surgical centers, and district medical examiners. As a result, 10 AHCA-certified, for-profit, out-of-state, eye banks and one AHCA-certified, for-profit, in-state eye bank will no longer be certified nor collect any eye, cornea, eye tissue, or corneal tissue within this state. Non-profit eye banks, located within or outside of Florida, would still be able to be certified and perform such actions.

Because the buying, selling, and transfer of human organs, tissue, and body parts, including eyes and corneas, is a second degree felony under current law, any for-profit entity that engages in the procurement, directly or indirectly, of any eye, cornea, eye tissue, or corneal tissue would be committing a crime under the bill.

### **B. SECTION DIRECTORY:**

- Section 1:** Amends s. 765.542, F.S., relating to requirements to engage in organ, tissue, or eye procurement.
- Section 2:** Amends s. 873.01, F.S., relating to purchase or sale of human organs and tissue prohibited.
- Section 3:** Provides an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill has an insignificant, negative fiscal impact on AHCA. AHCA estimates a loss of \$4,000 in annual assessment fees per year because the bill would cause 10 for-profit, out-of-state certified eye banks and one for-profit, in-state certified eye bank to lose certification.<sup>28</sup> Annual assessment fees are based on reported revenues.<sup>29</sup>

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill has a negative impact on the 10 for-profit, out-of-state certified eye banks and the one for-profit, in-state certified eye bank which. Such eye banks will no longer be licensed by AHCA and will not be able to conduct business in Florida.

### **D. FISCAL COMMENTS:**

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<sup>28</sup> *Supra*, note 16, at 4.

<sup>29</sup> Rule 59A-1.004(3), F.A.C.

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Current law provides sufficient rulemaking authority to implement the provisions of this bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**