

Committee Substitute for
Committee Substitute for Senate Bill No. 2630

An act relating to organ and tissue donation; amending s. 765.203, F.S.; deleting a provision in the form that designates a health care surrogate that provides an exception for anatomical gifts; amending s. 765.512, F.S.; revising provisions for making an organ donation; adding additional persons to the list of persons who may donate a decedent's body; removing the provision prohibiting a spouse from making a donation if the decedent's adult son or daughter objects; amending s. 765.514, F.S.; providing additional mechanisms for making an anatomical gift including registering with the organ and tissue donor registry; revising the uniform donor card to specify the type of donation; deleting a statement of public policy that prohibits restrictions on who may receive an anatomical gift, a provision specifying who can accept a gift, and a provision designating a physician to carry out appropriate procedures; amending s. 765.515, F.S.; requiring the Department of Highway Safety and Motor Vehicles to inform the donor registry of instances of making an anatomical gift and of withdrawal of an anatomical gift; deleting a provision requiring the Agency for Health Care Administration and the department to maintain a donor registry; creating s. 765.5155, F.S.; providing legislative intent with respect to establishing an online organ and tissue donor registry; requiring administration of the donor registry to be procured by competitive solicitation; specifying the duties of the contractor including the operation of the registry, a continuing public education program about organ donation, and the preparation of an annual report; providing for funding and for voluntary contributions to the registry; designating the donor registry as the "Joshua Abbott Organ and Tissue Donor Registry"; amending s. 765.516, F.S.; authorizing revocation of an anatomical gift by a donor through removal of his or her name from the registry; amending s. 765.517, F.S.; revising provisions relating to verification of a donor's consent at death; amending s. 765.521, F.S.; conforming a cross-reference; amending s. 765.522, F.S.; revising duties of hospital administrators with respect to reporting suitable donor candidates at or near the time of death; updating references to organ procurement organizations; repealing s. 765.5215, F.S., relating to an education program relating to anatomical gifts; repealing s. 765.5216, F.S., relating to the organ and tissue donor education panel; providing an effective date.

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

Section 1. Section 765.203, Florida Statutes, is amended to read:

765.203 Suggested form of designation.—A written designation of a health care surrogate executed pursuant to this chapter may, but need not be, in the following form:

DESIGNATION OF HEALTH CARE SURROGATE

Name:....(Last)....(First)....(Middle Initial)....

In the event that I have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:

Name:
Address: Zip Code:
Phone:.....

If my surrogate is unwilling or unable to perform his or her duties, I wish to designate as my alternate surrogate:

Name:
Address: Zip Code:
Phone:.....

I fully understand that this designation will permit my designee to make health care decisions, except for anatomical gifts, unless I have executed an anatomical gift declaration pursuant to law, and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.

Additional instructions (optional):

I further affirm that this designation is not being made as a condition of treatment or admission to a health care facility. I will notify and send a copy of this document to the following persons other than my surrogate, so they may know who my surrogate is.

Name:
Name:

Signed:
Date:

Witnesses: 1.
2.

Section 2. Subsections (1), (2), (3), and (4) of section 765.512, Florida Statutes, are amended to read:

765.512 Persons who may make an anatomical gift.—

(1) Any person who may make a will may give all or part of his or her body for any purpose specified in s. 765.513, s. 765.510, The gift is effective to take effect upon the death of the donor. An anatomical gift made by an

~~adult donor and not revoked by the donor as provided in s. 765.516 is irrevocable after the donor's death. A family member, guardian, representative ad litem, or health care surrogate of an adult donor who has made an anatomical gift pursuant to subsection (2) may not modify, deny, or prevent a donor's wish or intent to make an anatomical gift from being made after the donor's death.~~

~~(a)(2) If the decedent makes has executed an agreement concerning an anatomical gift, by one of the methods listed in s. 765.514(1), signing an organ and tissue donor card, by expressing his or her wish to donate in a living will or advance directive, or by signifying his or her intent to donate on his or her driver's license or in some other written form has indicated his or her wish to make an anatomical gift, and in the absence of actual notice of contrary indications by the decedent, the document or entry in the organ and tissue registry is evidence of legally sufficient evidence of the decedent's informed consent to donate an anatomical gift and is legally binding.~~

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

~~(2) A health care Any surrogate designated by the decedent pursuant to part II of this chapter may give all or any part of the decedent's body for any purpose specified in s. 765.513 absent actual notice of contrary indications by the decedent s. 765.510.~~

~~(3) If the decedent has not made executed an agreement concerning an anatomical gift or designated a health surrogate pursuant to part II of this chapter to make an anatomical gift pursuant to the conditions of subsection (2), a member of one of the classes of persons listed below, in the order of priority listed ~~stated~~ and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in s. 765.513 s. 765.510:~~

- ~~(a) The spouse of the decedent;~~
- ~~(b) An adult son or daughter of the decedent;~~
- ~~(c) Either parent of the decedent;~~
- ~~(d) An adult brother or sister of the decedent;~~
- ~~(e) An adult grandchild of the decedent;~~
- ~~(f) A grandparent of the decedent;~~

~~(g) A close personal friend, as defined in s. 765.101;(h)(f) A guardian of the person of the decedent at the time of his or her death; or~~

~~(i)(g) A representative ad litem who shall be appointed by a court of competent jurisdiction forthwith upon a petition heard ex parte filed by any~~

person, ~~who which~~ representative ad litem shall ascertain that no person of higher priority exists who objects to the gift of all or any part of the decedent's body and that no evidence exists of the decedent's having made a communication expressing a desire that his or her body or body parts not be donated upon death.;

~~but no gift shall be made by the spouse if any adult son or daughter objects, and provided that Those of higher priority who, if they are reasonably available must be, have been contacted and made aware of the proposed gift, and further provided that a reasonable search must be conducted which shows is made to show that there would have been no objection to the gift on religious grounds by the decedent.~~

(4) ~~A donee may not accept an anatomical gift if the donee has actual notice of contrary indications by the donor decedent or, in the case of a spouse making the gift, an objection of an adult son or daughter or actual notice that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.~~

Section 3. Section 765.514, Florida Statutes, is amended to read:

765.514 Manner of making ~~executing~~ anatomical gifts.—

(1) A person may make a gift of all or part of his or her ~~the~~ body under s. 765.512(1) ~~may be made by will~~;

(a) Signing an organ and tissue donor card.

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

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

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

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

(f)(2)(a) Expressing a wish to donate in ~~A gift of all or part of the body under s. 765.512(1) may also be made by~~ a document other than a will. The gift becomes effective upon the death of the donor. The document must be signed by the donor in the presence of two witnesses who shall sign the document in the donor's presence. If the donor cannot sign, the document may be signed for him or her at the donor's direction and in his or her presence and the presence of two witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(b) The following form of written document is instrument shall be sufficient for any person to give all or part of his or her body for the purposes of this part:

UNIFORM DONOR CARD

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

I give:

- (a) any needed organs, tissues, or eyes parts;
- (b) only the following organs, tissues, or eyes or parts
 ...[Specify the organs, tissues, or eyes organ(s) or part(s)]...

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

- (c) my body for anatomical study if needed. Limitations or special wishes, if any:
 ...[(If applicable, list specific donee; this must be arranged in advance with the donee.)]...

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

...(Signature of donor)...	...(Date of birth of donor)...
...(Date signed)...	...(City and State)...
...(Witness)...	...(Witness)...
...(Address)...	...(Address)...

~~(2)(3) The gift may be made to a donee listed in s. 765.513 and the donee may be specified by name. If the donee is not specified by name, the gift may be accepted by the attending physician as donee upon or following the donor's death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may accept the gift as donee upon or following death in the absence of any expressed indication that the donor desired otherwise. However, the Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, sex, national origin, age, physical handicap, health status, marital status, or economic status, and such restrictions are hereby declared void and unenforceable. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.~~

~~(4) Notwithstanding s. 765.517(2), the donor may designate in his or her will or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.~~

~~(3)(5) Any gift by a health care surrogate designated by the decedent pursuant to part II of this chapter or a member of a class designated in s.~~

765.512(3) must be made by a document signed by that person or made by that person's witnessed telephonic discussion, telegraphic message, or other recorded message.

Section 4. Section 765.515, Florida Statutes, is amended to read:

765.515 Delivery of donor document; ~~organ and tissue donor registry.~~—

(1) If a gift is made pursuant to through the program established by the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles under the authority of s. 765.521, the completed donor registration card shall be delivered to the Department of Highway Safety and Motor Vehicles and the department must communicate the donor's intent to the organ and tissue donor registry processed in a manner specified in subsection (4), but delivery is not necessary to the validity of the gift. If the donor withdraws the gift, the records of the Department of Highway Safety and Motor Vehicles must shall be updated to reflect such withdrawal and the department must communicate the withdrawal to the organ and tissue donor registry for the purpose of updating the registry.

(2) If a gift is not made ~~through the program established by the Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles under the authority of s. 765.521~~ and is made by the donor to a specified donee, the document, other than a will, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. Such document may be deposited in any hospital, bank, storage facility, or registry office that accepts such documents for safekeeping or to facilitate the donation of organs and tissue for facilitation of procedures after death.

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

~~(4) The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement an organ and tissue donor registry which shall record, through electronic means, organ and tissue donation documents submitted through the driver license identification program or by other sources. The registry shall be maintained in a manner which will allow, through electronic and telephonic methods, immediate access to organ and tissue donation documents 24 hours a day, 7 days a week. Hospitals, organ and tissue procurement agencies, and other parties identified by the agency by rule shall be allowed access through coded means to the information stored in the registry. Costs for the organ and tissue donor registry shall be paid from the Florida Organ and Tissue Donor Education and Procurement Trust Fund created by s. 765.52155. Funds deposited into the Florida Organ and Tissue Donor Education and Procurement Trust Fund shall be utilized by the Agency for Health Care Administration for maintaining the organ and tissue donor registry and for organ and tissue donor education.~~

Section 5. Section 765.5155, Florida Statutes, is created to read:

765.5155 Organ and tissue donor registry; education program.—

(1) The Legislature finds that:

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

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

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

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

(3) The contractor shall be responsible for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Paragraph (e) is added to subsection (1) of section 765.516, Florida Statutes, to read:

765.516 Amendment of the terms of or the revocation of the gift.—

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

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

Section 7. Subsection (3) of section 765.517, Florida Statutes, is amended to read:

765.517 Rights and duties at death.—

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

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

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

Section 8. Subsection (1) of section 765.521, Florida Statutes, is amended to read:

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

(1) The Agency for Health Care Administration and the Department of Highway Safety and Motor Vehicles shall develop and implement a program encouraging and allowing persons to make anatomical gifts as a part of the process of issuing identification cards and issuing and renewing driver licenses. The donor registration card distributed by the Department of Highway Safety and Motor Vehicles shall include the information required by the uniform donor card under s. 765.514 ~~material specified by s. 765.514(2)(b) and may require such additional information, and include such additional material, as determined may be deemed necessary by the that department.~~ The department of ~~Highway Safety and Motor Vehicles~~ shall also develop and implement a program to identify donors, which ~~includes program shall include~~ notations on identification cards, driver licenses, and driver records or such other methods as the department ~~develops to may develop.~~ This program shall include, after an individual has completed a donor registration card, making a notation on the front of the driver license or identification card that clearly indicate indicates the individual's intent to donate the individual's organs, tissues, or eyes tissue. A notation on an individual's driver license or identification card that the individual intends to donate organs, ~~or tissues, or eyes satisfies is deemed sufficient to satisfy~~ all requirements for consent to organ or tissue donation. The Agency for Health Care Administration shall provide the necessary supplies and forms ~~from through~~ funds appropriated from general revenue or contributions from interested voluntary, nonprofit organizations. The department of ~~Highway Safety and Motor Vehicles~~ shall provide the necessary recordkeeping system ~~from through~~ funds appropriated from general revenue. The Department of Highway Safety and Motor Vehicles and the Agency for Health Care Administration shall incur no liability in connection with the performance of any acts authorized herein.

Section 9. Subsections (2) and (6) of section 765.522, Florida Statutes, are amended to read:

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

(2) Where, based on accepted medical standards, a hospital patient is a suitable candidate for organ or tissue donation, the hospital administrator or the hospital administrator's designee shall, at or near the time of death, notify the appropriate organ, eye, or tissue recovery program, which shall access the organ and tissue donor registry created by s. 765.5155 ~~s.~~

765.515(4) to ascertain the existence of an entry in the registry that has not been revoked, a donor card, or a document executed by the decedent. In the absence of an entry in the donor registry, a donor card, organ donation sticker or organ donation imprint on a driver's license, or other properly executed document, the organ, eye, or tissue recovery program hospital administrator or designee shall request:

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

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

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

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

Section 10. Sections 765.5215 and 765.5216, Florida Statutes, are repealed.

Section 11. This act shall take effect July 1, 2008.

Approved by the Governor June 23, 2008.

Filed in Office Secretary of State June 23, 2008.