

CHAPTER 98-68

Senate Bill No. 304

An act relating to organ and tissue donation; amending ss. 320.08047, 322.08, 381.6024, F.S.; authorizing the use of certain funds for maintaining the organ and tissue donor registry; revising annual assessments on certain organ procurement organizations, tissue banks, and eye banks; amending s. 732.911, F.S.; providing definitions; amending ss. 732.912, 732.914, F.S.; clarifying who may make an anatomical gift in the absence of a declaration by a decedent; amending s. 732.913, F.S.; specifying that entities as well as persons may become donees of anatomical gifts; amending s. 732.915, F.S.; repealing an annual assessment on organ procurement organizations, tissue banks, and eye banks; amending s. 732.916, F.S.; revising procedures for amending or revoking an anatomical gift, amending s. 732.9216, F.S.; adding a cross-reference; amending s. 732.922, F.S.; providing a limitation in civil or criminal liability for organ procurement organizations, eye banks, tissue banks, hospitals, and hospital administrators or their designees; providing additional duties for the hospital administrator or his designee and for organ procurement organizations; providing severability; providing effective dates.

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

Section 1. Section 320.08047, Florida Statutes, is amended to read:

320.08047 Voluntary contribution for organ and tissue donor education.—As a part of the collection process for license taxes as specified in s. 320.08, individuals shall be permitted to make a voluntary contribution of \$1, which contribution shall be deposited into the Florida Organ and Tissue Donor Education and Procurement Trust Fund for organ and tissue donor education and for maintaining the organ and tissue donor registry.

Section 2. Paragraph (b) of subsection (7) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license.—

(7) The application form for a driver's license or duplicate thereof shall include language permitting the following:

(b) A voluntary contribution of \$1 per applicant, which contribution shall be deposited into the Florida Organ and Tissue Donor Education and Procurement Trust Fund for organ and tissue donor education and for maintaining the organ and tissue donor registry.

A statement providing an explanation of the purpose of the trust funds shall also be included.

Section 3. Subsection (2) and paragraph (b) of subsection (4) of section 381.6024, Florida Statutes, are amended to read:

381.6024 Fees; Florida Organ and Tissue Donor Education and Procurement Trust Fund.—

(2) The Agency for Health Care Administration shall assess annual fees to be used, in the following order of priority, for the certification program, and the advisory board, maintenance of the organ and tissue donor registry, and the organ and tissue donor education program in the following amounts, which may not exceed \$35,000 per organization:

(a) Each general organ procurement organization shall pay the greater of \$1,000 or 0.5 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

(b) Each bone and tissue procurement agency or bone and tissue bank shall pay the greater of \$1,000 or 0.5 percent of its total revenues from procurement and processing activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

(c) Each eye bank shall pay the greater of \$500 or 0.5 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

(4)

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

Section 4. Effective July 1, 1999, subsection (2) of section 381.6024, Florida Statutes, as amended by this act, is amended to read:

381.6024 Fees; Florida Organ and Tissue Donor Education and Procurement Trust Fund.—

(2) The Agency for Health Care Administration shall assess annual fees to be used, in the following order of priority, for the certification program, the advisory board, maintenance of the organ and tissue donor registry, and the organ and tissue donor education program in the following amounts, which may not exceed \$35,000 per organization:

(a) Each general organ procurement organization shall pay the greater of \$1,000 or 0.25 ~~0.5~~ percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

(b) Each bone and tissue procurement agency or bone and tissue bank shall pay the greater of \$1,000 or 0.25 ~~0.5~~ percent of its total revenues from procurement and processing activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

(c) Each eye bank shall pay the greater of \$500 or ~~0.25~~ 0.5 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal year or operational year.

Section 5. Section 732.911, Florida Statutes, is amended to read:

732.911 Definitions.—~~As used in~~ For the purpose of this part, the term:

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

(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.

~~(3)~~(2) “Donor” means an individual who makes a gift of all or part of his or her body.

~~(4)~~(3) “Hospital” means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States Government or a state, or a subdivision thereof, although not required to be licensed under state laws.

~~(5)~~(4) “Physician” or “surgeon” means a physician or surgeon licensed to practice under chapter 458 or chapter 459 or similar laws of any state. “Surgeon” includes dental or oral surgeon.

Section 6. Section 732.912, Florida Statutes, is amended to read:

732.912 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. 732.910, the gift to take effect upon death. An anatomical gift made by an adult donor and not revoked by the donor as provided in s. 732.916 is irrevocable and does not require the consent or concurrence of any person after the donor’s death.

(2) If the decedent has not executed an agreement concerning an anatomical gift, a member of one of the classes of persons listed below, in the order of priority 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, any of the following persons may give all or any part of the decedent’s body for any purpose specified in s. 732.910:

- (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) A grandparent of the decedent;
- (f) A guardian of the person of the decedent at the time of his or her death; or
- (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, 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, if they are reasonably available, have been contacted and made aware of the proposed gift, and further provided that a reasonable search is made to show that there would have been no objection on religious grounds by the decedent.

(3) If the donee has actual notice of contrary indications by the 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.

(4) The person authorized by subsection (2) may make the gift after the decedent's death or immediately before the decedent's death.

(5) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(6) Once the gift has been made, the rights of the donee created by the gift are paramount to the rights of others, except as provided by s. 732.917.

Section 7. Section 732.913, Florida Statutes, is amended to read:

732.913 Persons and entities that who may become donees; purposes for which anatomical gifts may be made.—The following persons or entities may become donees of gifts of bodies or parts of them for the purposes stated:

(1) Any hospital, surgeon, or physician for medical or dental education or research, advancement of medical or dental science, therapy, or transplantation.

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

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

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

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.

Section 8. Subsection (5) of section 732.914, Florida Statutes, is amended to read:

732.914 Manner of executing anatomical gifts.—

(5) Any gift by a member of a class ~~person~~ designated in s. 732.912(2) ~~must shall~~ 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 9. Subsection (4) of section 732.915, Florida Statutes, is amended to read:

732.915 Delivery of document; organ and tissue donor registry.—

(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. 732.92155. Funds deposited into the Florida Organ and Tissue Donor Education and Procurement Trust Fund ~~pursuant to this section~~ 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. ~~The Agency for Health Care Administration shall levy an annual assessment against each registered organ procurement organization, tissue bank, and eye bank, based on the methodology set out in s. 381.6024 for the purpose of maintaining the organ and tissue donor registry. The combined total assessments levied upon all organ procurement organizations, tissue banks, and eye banks shall not exceed \$30,000 annually.~~

Section 10. Section 732.916, Florida Statutes, is amended to read:

732.916 Amendment or revocation of the gift.—

(1) ~~A~~ If the will or other document authorized under the provisions of s. 732.915(2) has been delivered to a specified donee, the donor may amend or revoke an anatomical the gift by:

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

(b) An oral statement that is:

1. Made to the donor's spouse; or
2. Made in the presence of two persons and communicated to the donor's family or attorney or to the donee.

(c) A statement during a terminal illness or injury addressed to an attending physician, who must communicate the revocation of the gift to the procurement organization that is certified by the state and communicated to the donee.

(d) A signed document found on the donor's person or in the donor's effects.

~~(2) A document of gift that has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) or by destruction, cancellation, or mutilation of the document.~~

~~(2)~~⁽³⁾ Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (1).

Section 11. Subsection (1) of section 732.9216, Florida Statutes, is amended to read:

732.9216 Organ and tissue donor education panel.—

(1) The Legislature recognizes that there exists in the state a shortage of organ and tissue donors to provide the organs and tissue that could save lives or enhance the quality of life for many Floridians. The Legislature further recognizes the need to encourage the various minority populations of Florida to donate organs and tissue. It is the intent of the Legislature that the funds collected pursuant to ss. 320.08047 and s. 322.08(7)(b) be used exclusively for educational purposes aimed at increasing the number of organ and tissue donors, thus affording more Floridians who are awaiting organ or tissue transplants the opportunity for a full and productive life.

Section 12. Section 732.922, Florida Statutes, is amended to read:

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

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

(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, access the organ and tissue donor registry created by s. 732.915(4) to ascertain the existence of a donor card or document executed by the decedent. In the absence of a donor card, organ donation sticker or organ donation imprint on a driver's license, or other properly executed or document, the

hospital administrator or designee shall request any of the persons specified in s. 732.912, in the order and manner of priority stated in s. 732.912, 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. 732.912, in the absence of actual notice of opposition, consent ~~or refusal~~ need only be obtained from the person or persons in the highest priority class reasonably available.

(3) A gift made pursuant to a request required by this section shall be executed pursuant to s. 732.914.

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

~~(5) There shall be no civil or criminal liability against any organ procurement organization, eye bank, or tissue bank certified under s. 381.6022, or against any hospital or hospital administrator or designee, when complying with the provisions of this part and the rules of the Agency for Health Care Administration or when, in the exercise of reasonable care, a request for organ donation is inappropriate and the gift is not made according to this part and the rules of the Agency for Health Care Administration. No recovery shall be allowed nor shall civil or criminal proceedings be instituted in any court in this state against the licensed hospital or the hospital administrator or the hospital administrator's designee when, in his or her best judgment, he or she deems such a request for organ donation to be inappropriate according to the procedures established by the Agency for Health Care Administration, or he or she has made every reasonable effort to comply with the provisions of this section.~~

(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 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 United Network for Organ Sharing. This notification 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 organ procurement organization.

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 14. Except as otherwise provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor May 21, 1998.

Filed in Office Secretary of State May 21, 1998.