



2003 ASSEMBLY BILL 957

March 11, 2004 – Introduced by Representatives VRUWINK, SHILLING, SCHNEIDER and HUBER. Referred to Committee on Rules.

1 **AN ACT to amend** 154.03 (2) (intro.), 155.30 (3) (intro.), 343.135 (3), 343.17 (3)
2 (b), 343.20 (2m), 343.50 (3), 343.50 (4) and 343.50 (6); and **to create** 343.14 (2)
3 (gm), 343.14 (7m), 343.17 (3) (a) 14., 343.177 and 343.50 (4r) of the statutes;
4 **relating to:** requiring the department of transportation to inquire about and
5 offer living will and health care power of attorney forms to applicants for
6 driver's licenses and identification cards, and including living will and health
7 care power of attorney information on driver's licenses and identification cards.

Analysis by the Legislative Reference Bureau

Under current law, any person aged at least 18 and of sound mind may voluntarily execute a declaration to physicians (commonly known as a "living will") authorizing the withholding or withdrawal of life-sustaining procedures or of feeding tubes when the person is in a terminal condition or is in a persistent vegetative state. Also under current law, any person aged at least 18 and of sound mind may voluntarily execute a power of attorney for health care, under which, if the person is found to be incapacitated, the person's designated agent may make health care decisions on behalf of the person. The Department of Health and Family Services (DHFS) is required to prepare and provide copies of living will and health care power of attorney forms, in quantities, to health care professionals, hospitals, nursing homes, county clerks, and local bar associations, and individually to private persons.

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This bill requires that the forms for application for an operator's license or identification card or for a renewal of such a license or card include a question, for an applicant who is aged at least 18, as to whether the applicant has executed a living will or health care power of attorney. The application form must indicate the purpose of asking the question and that the applicant is not required to respond to the question. If an applicant indicates that he or she has executed a living will or health care power of attorney and wants the information to appear on the driver's license document or identification card, the Department of Transportation (DOT) must request that the applicant write on the driver's license or identification card the identity of any individual designated as the applicant's agent under a health care power of attorney and affix a sticker, developed by DOT, to the license document or identification card. DOT must maintain a record of applicants who have identified themselves as having executed a living will or health care power of attorney and make that record available to law enforcement or appropriate persons under specified circumstances. Whenever an applicant indicates that he or she has not executed a living will or health care power of attorney, and whenever DOT mails a notice of license renewal to a licensee who, by DOT's records, has not previously executed a living will or health care power of attorney, DOT must offer the applicant, or mail to the licensee, the living will and health care power of attorney forms. The bill requires DHFS to provide copies of living will and health care power of attorney forms to DOT.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 154.03 (2) (intro.) of the statutes is amended to read:
2 154.03 (2) (intro.) The department shall prepare and provide copies of the
3 declaration and accompanying information for distribution in quantities to health
4 care professionals, hospitals, nursing homes, county clerks ~~and~~, local bar
5 associations, and the department of transportation and individually to private
6 persons. The department shall include, in information accompanying the
7 declaration, at least the statutory definitions of terms used in the declaration,
8 statutory restrictions on who may be witnesses to a valid declaration, a statement
9 explaining that valid witnesses acting in good faith are statutorily immune from civil
10 or criminal liability, an instruction to potential declarants to read and understand

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1 the information before completing the declaration and a statement explaining that
2 an instrument may, but need not be, filed with the register in probate of the
3 declarant's county of residence. The department may charge a reasonable fee for the
4 cost of preparation and distribution. The declaration distributed by the department
5 of health and family services shall be easy to read, the type size may be no smaller
6 than 10 point, and the declaration shall be in the following form, setting forth on the
7 first page the wording before the ATTENTION statement and setting forth on the
8 2nd page the ATTENTION statement and remaining wording:

9 **SECTION 2.** 155.30 (3) (intro.) of the statutes is amended to read:

10 155.30 (3) (intro.) The department shall prepare and provide copies of a power
11 of attorney for health care instrument and accompanying information for
12 distribution in quantities to health care professionals, hospitals, nursing homes,
13 multipurpose senior centers, county clerks ~~and~~, local bar associations, and the
14 department of transportation and individually to private persons. The department
15 shall include, in information accompanying the copy of the instrument, at least the
16 statutory definitions of terms used in the instrument, statutory restrictions on who
17 may be witnesses to a valid instrument, a statement explaining that valid witnesses
18 acting in good faith are statutorily immune from civil or criminal liability and a
19 statement explaining that an instrument may, but need not, be filed with the register
20 in probate of the principal's county of residence. The department may charge a
21 reasonable fee for the cost of preparation and distribution. The power of attorney for
22 health care instrument distributed by the department shall include the notice
23 specified in sub. (1) and shall be in the following form:

24 **SECTION 3.** 343.135 (3) of the statutes is amended to read:

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1 343.135 **(3)** DESIGN OF LICENSE. The special restricted license shall be of the
2 same size and general design of the operator’s license, except that it shall bear the
3 words “SPECIAL RESTRICTED LICENSE”. The information on the license shall
4 be the same as specified under s. 343.17 (3) and the holder may affix a decal thereto
5 as provided in s. 343.175 (3) or a sticker thereto as provided in s. 343.177 (2). All
6 restrictions imposed under sub. (6) shall be listed on the license or on an attachment
7 thereto.

8 **SECTION 4.** 343.14 (2) (gm) of the statutes is created to read:

9 343.14 **(2)** (gm) If the applicant is aged at least 18, a question as to whether the
10 applicant has executed a declaration to physicians under ch. 154 or a power of
11 attorney for health care under ch. 155. The form shall indicate the following:

12 1. That the applicant is not required to respond to the question under this
13 paragraph in order to obtain a license.

14 2. That the purpose of asking the question is to encourage the use of a
15 declaration to physicians in the event that the applicant has a terminal condition or
16 is in a persistent vegetative state and to encourage the designation of an individual
17 to serve as the applicant’s agent under a power of attorney for health care in the event
18 that the applicant has incapacity to make health care decisions.

19 **SECTION 5.** 343.14 (7m) of the statutes is created to read:

20 343.14 **(7m)** (a) If an applicant, in response to a question under sub. (2) (gm),
21 indicates that he or she has not executed a declaration to physicians or a power of
22 attorney for health care, the department shall offer the applicant the forms provided
23 under ss. 154.03 (2) (intro.) and 155.30 (3) (intro.).

24 (b) The department shall maintain a record of applicants who respond in the
25 affirmative to the question under sub. (2) (gm) and who desire this information to be

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1 recorded with the department. In the event that an applicant has a terminal
2 condition or is in a persistent vegetative state or has incapacity to make health care
3 decisions, at the request of a law enforcement officer or other appropriate person, as
4 determined by the department, the department shall examine its records and shall
5 advise the law enforcement officer or other person as to whether the applicant is
6 recorded as having executed a declaration to physicians under ch. 154 or a power of
7 attorney for health care under ch. 155. An applicant may notify the department in
8 writing at any time if he or she wishes to include his or her name in the record
9 maintained by the department under this paragraph. An applicant who revokes his
10 or her declaration to physicians under ch. 154 or power of attorney for health care
11 under ch. 155 and who has requested that his or her name be included in the record
12 under this paragraph shall request the department in writing to remove his or her
13 name from the record under this paragraph.

14 **SECTION 6.** 343.17 (3) (a) 14. of the statutes is created to read:

15 343.17 (3) (a) 14. A space for the sticker under s. 343.177 (2).

16 **SECTION 7.** 343.17 (3) (b) of the statutes is amended to read:

17 343.17 (3) (b) The reverse side of the license shall contain an explanation of any
18 restriction codes or endorsement abbreviations used on the front of the license, in
19 sufficient detail to identify the nature of the restrictions or endorsements to a law
20 enforcement officer of this state or another jurisdiction. Except for a commercial
21 driver license or a license labeled "CDL-Occupational" as described in s. 343.03 (3)
22 (b) and (e), a part of the reverse side of each license shall be printed to serve as a
23 document of gift under s. 157.06 (2) (b) and (c) or a document of refusal to make an
24 anatomical gift under s. 157.06 (2) (i). A part of the reverse side of each license shall

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1 be printed to allow an applicant to identify an individual designated as the
2 applicant's agent under a power of attorney for health care.

3 **SECTION 8.** 343.177 of the statutes is created to read:

4 **343.177 Living will and health care power of attorney information. (1)**

5 If an applicant makes an affirmative response to the inquiry under s. 343.14 (2) (gm)
6 or s. 343.50 (4) that the applicant has executed a declaration to physicians under ch.
7 154 or a power of attorney for health care under ch. 155 and desires this information
8 to be recorded with the department and the applicant also desires that the
9 information appear on the license document or identification card, the department
10 shall request, at the time of application, that the applicant write on the license or
11 identification card the identity of any individual designated as the applicant's agent
12 under a power of attorney for health care and affix a sticker, as described in sub. (2),
13 to the front side of the license document or identification card.

14 **(2) (a)** The department shall designate a space on the front side of each license
15 document and identification card where the licensee or card holder may affix a
16 sticker indicating that the licensee or card holder has executed a declaration to
17 physicians under ch. 154 or a power of attorney for health care under ch. 155 or both.

18 **(b)** The department shall develop and make available to each applicant a
19 sticker for use under par. (a). The sticker shall be of a distinctive design and shall
20 not conceal any of the contents required by s. 343.17 (3) or 343.50 (3) when properly
21 placed.

22 **(3)** If the applicant revokes a declaration to physicians under ch. 154 or a power
23 of attorney for health care under ch. 155, or changes the individual designated as the
24 applicant's agent under a power of attorney for health care, the applicant shall cross
25 out or amend the applicable portion of the license document or identification card,

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1 if possible, and provide notice to the department as required under s. 343.14 (7m) (b)
2 or 343.50 (4r) (c).

3 **SECTION 9.** 343.20 (2m) of the statutes, as affected by 2003 Wisconsin Act 33,
4 is amended to read:

5 343.20 **(2m)** The department shall include with the notice that it mails under
6 sub. (2) information regarding the requirements of s. 347.48 (4) and, information, as
7 developed by all organ procurement organizations in cooperation with the
8 department, that promotes anatomical donations and which relates to the
9 anatomical donation opportunity available under s. 343.175, and, if the licensee has
10 not previously made an affirmative response to the inquiry under s. 343.14 (2) (gm),
11 the forms specified in s. 343.14 (7m) (a).

12 **SECTION 10.** 343.50 (3) of the statutes is amended to read:

13 343.50 **(3)** DESIGN AND CONTENTS OF CARD. The card shall be the same size as
14 an operator's license but shall be of a design which is readily distinguishable from
15 the design of an operator's license and bear upon it the words "IDENTIFICATION
16 CARD ONLY". The information on the card shall be the same as specified under s.
17 343.17 (3). The card may serve as a document of gift under s. 157.06 (2) (b) and (c)
18 and the holder may affix a sticker thereto as provided in s. 343.175 (3). The card may
19 also serve as a document of refusal to make an anatomical gift under s. 157.06 (2) (i).
20 The card may contain the information specified under s. 343.177 and the holder may
21 affix a sticker thereto as provided in s. 343.177 (2). The card shall contain the
22 holder's photograph and, if applicable, shall be of the design specified under s. 343.17
23 (3) (a) 12.

24 **SECTION 11.** 343.50 (4) of the statutes, as affected by 2003 Wisconsin Act 33,
25 is amended to read:

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1 343.50 (4) APPLICATION. The application for an identification card shall include
2 any information required under ss. 85.103 (2) and 343.14 (2) (a), (b), (bm), (br), and
3 (em), and (gm), and such further information as the department may reasonably
4 require to enable it to determine whether the applicant is entitled by law to an
5 identification card. The department shall, as part of the application process, take a
6 photograph of the applicant to comply with sub. (3). No application may be processed
7 without the photograph being taken. Misrepresentations in violation of s. 343.14 (5)
8 are punishable as provided in s. 343.14 (9).

9 **SECTION 12.** 343.50 (4r) of the statutes is created to read:

10 343.50 (4r) LIVING WILL AND HEALTH CARE POWER OF ATTORNEY INFORMATION. (a)
11 If the applicant makes an affirmative response to the question under sub. (4) that he
12 or she has executed a declaration to physicians under ch. 154 or a power of attorney
13 for health care under ch. 155 and desires this information to be recorded with the
14 department and the applicant also desires that the information appear on the
15 identification card, the department shall request, at the time of application, that the
16 applicant write on the identification card the identity of any individual designated
17 as the applicant's agent under a power of attorney for health care and affix a sticker
18 to the front side of the identification card as provided in s. 343.177 (2).

19 (b) If an applicant in response to a question under sub. (4) indicates that he or
20 she has not executed a declaration to physicians under ch. 154 or a power of attorney
21 for health care under ch. 155, the department shall offer the applicant the forms
22 provided under ss. 154.03 (2) (intro.) and 155.30 (3) (intro.).

23 (c) The department shall maintain a record of applicants who make an
24 affirmative response to the question under sub. (4) that they have executed a
25 declaration to physicians under ch. 154 or a power of attorney for health care under

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1 ch. 155 and desire this information to be recorded with the department. The record
2 may be used in the manner and for the purposes specified in s. 343.14 (7m) (b). An
3 applicant may notify the department in writing at any time if he or she wishes to
4 include his or her name in the record maintained by the department under this
5 paragraph. An applicant who revokes his or her declaration to physicians under ch.
6 154 or power of attorney for health care under ch. 155 and who has requested that
7 his or her name be included in the record under this paragraph shall request the
8 department in writing to remove his or her name from the record under this
9 paragraph.

10 **SECTION 13.** 343.50 (6) of the statutes is amended to read:

11 343.50 (6) RENEWAL. At least 30 days prior to the expiration of the card, the
12 department shall mail a renewal application to the last-known address of each
13 identification card holder. The department shall include with the application
14 information, as developed by all organ procurement organizations in cooperation
15 with the department, that promotes anatomical donations and which relates to the
16 anatomical donation opportunity available under s. 343.175 and, if the identification
17 card holder has not previously made an affirmative response to the question under
18 sub. (4) that he or she has executed a declaration to physicians under ch. 154 or a
19 power of attorney for health care under ch. 155, the forms specified in sub. (4r) (b).
20 The fee for a renewal identification card shall be \$9, which card shall be valid for 4
21 years.

22 **SECTION 14. Initial applicability.**

23 (1) This act first applies to applications for an operator's license or
24 identification card, or renewal of an operator's license or identification card,

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1 submitted to the department of transportation on the effective date of this
2 subsection.

3 **SECTION 15. Effective date.**

4 (1) This act takes effect on the first day of the 4th month beginning after
5 publication.

6 (END)