



2007 ASSEMBLY BILL 570

November 6, 2007 - Introduced by Representatives WIECKERT, KERKMAN, STASKUNAS, HAHN, DAVIS, JESKEWITZ, LOTHIAN, A. OTT, BLACK, TURNER, BERCEAU, CULLEN, TOWNSEND, A. WILLIAMS, BIES, BALLWEG, TAUCHEN and WASSERMAN, cosponsored by Senators RISSER, ROESSLER, MILLER, SCHULTZ, KEDZIE, OLSEN, COGGS, LASSA and SULLIVAN. Referred to Committee on Health and Healthcare Reform.

1 **AN ACT** *to repeal* 343.175 (3) (b); *to renumber* 343.175 (3) (a); *to amend* 71.05
2 (10) (i) 1., 146.345 (title), (1) (a), (b) and (c) and (2), 146.82 (2) (a) 19., 155.20 (8),
3 155.30 (1) (form), 230.35 (2d) (a) 2., 252.15 (2) (a) 1. and (am) 1. and 2. and (5)
4 (a) 5., 343.17 (3) (b), 343.175 (1), 343.175 (1r), 343.175 (2) (title), 343.175 (2) (a),
5 343.175 (2) (ag), 343.50 (3), 343.50 (4m) (a), 343.50 (4m) (b) and 343.50 (8) (b);
6 and *to repeal and recreate* 157.06 of the statutes; **relating to:** anatomical
7 gifts, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current anatomical gift law

Current anatomical gift law is based, with some modifications, on the Uniform Anatomical Gift Act of 1987 promulgated by the National Conference of Commissioners on Uniform State Laws.

Anatomical gift of one's body or body parts; refusal to make anatomical gift. Under current law, an anatomical gift is a donation of a person's body or body parts (organs, including eyes, tissues, or bodily fluids) for transplantation, therapy, or medical research or education, that is effective upon the person's death. Currently, a person who is at least 18 years old may make an anatomical gift of his or her body or body parts by signing a written document of gift, or if he or she cannot do so, by directing another to sign a document of gift on his or her behalf. A person who is at

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least 18 years old may also refuse to make an anatomical gift of his body or body parts by signing a written refusal or, if the person has a terminal illness or injury, by communicating a refusal orally or by any other means of communication. The Department of Transportation must include on driver's licenses and identification cards a writing that may serve as a document of gift or a refusal, and must provide a sticker indicating organ donor status, which a person may affix to his or her driver's license or identification card. However, use of the sticker alone does not effect an anatomical gift. A person may amend or revoke a document of gift or a refusal during his or her lifetime.

Upon the death of a person who has made an unrevoked anatomical gift of his or her body or body parts, the anatomical gift is effective without need of consent or concurrence by any other person. An individual's unrevoked refusal bars all others from making an anatomical gift of the person's body or body parts. Absent contrary indications by a donor, an anatomical gift of a body part does not constitute a refusal or limitation on making an anatomical gift of another body part of the donor. Absent contrary indications by a donor, a revocation or amendment of an anatomical gift does not constitute a refusal to make another anatomical gift.

Anatomical gift after death by a relative or agent. If a deceased did not make an unrevoked anatomical gift or unrevoked refusal relating to his or her body or a particular body part during his or her lifetime, the following relatives or agents of the deceased, in the order of priority listed, may make an anatomical gift of the body or body part: 1) spouse; 2) adult child; 3) parent; 4) adult sibling; 5) grandparent; 6) guardian; or 7) health care agent. A relative or agent may not make an anatomical gift of a deceased's body or body parts if he or she knows that the deceased refused to allow an anatomical gift of his or her body or body parts or if any person with the same or higher priority to make an anatomical gift objects to making an anatomical gift. A relative or agent of a deceased may make an anatomical gift on behalf of the deceased by signing a written document of gift or providing an oral authorization for a gift that is recorded, transcribed, and signed. If an anatomical gift is made by a relative or agent of the deceased, any person with equal or higher priority to make an anatomical gift may revoke the anatomical gift unless procedures to remove a body part from the deceased have begun.

Who may accept an anatomical gift. A hospital, physician, or organ procurement organization (OPO) may accept an anatomical gift made for transplantation, therapy, medical research or education, an individual may accept an anatomical gift of a body part for transplantation or therapy, and a school may accept an anatomical gift for medical research or education.

Procurement process. Federal law requires that hospitals notify a federally approved OPO or its designee of deaths and imminent deaths at the hospital. The OPO determines the medical suitability of a deceased's organs for donation, and may also determine the medical suitability of eyes and tissues for donation. Under federal law, if organs, tissues, or eyes are medically suitable for donation, the hospital, in collaboration with the OPO, must ensure that the family of the deceased is notified of its options to donate or refuse to donate organs, tissues, or eyes. The Organ Procurement and Transplant Network, created under federal law, controls the

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allocation of hearts, kidneys, livers, lungs, and pancreases for transplantation. Federal law also requires hospitals to have agreements with tissue banks and eye banks for the retrieval, storage, and distribution of tissue and eyes.

Immunity. Under current law, a person who acts, or in good faith attempts to act, in accordance with the anatomical gift law of this state or applicable anatomical gift law of another state or country is immune from civil or criminal liability for such acts.

Changes made in the bill

This bill makes changes to anatomical gift law based on the Revised Uniform Anatomical Gift Act of 2006 promulgated by the National Conference of Commissioners on Uniform State Laws.

Who may make an anatomical gift during a person's lifetime. The bill provides that a person who is at least 15 and one-half years old or an emancipated minor may make an anatomical gift of his or her body or body parts. The bill also allows others under the following circumstances to make an anatomical gift on behalf of a person during the person's lifetime: a parent of an unemancipated minor may make an anatomical gift on behalf of the minor if the minor does not object; a health care agent for a person, or another designated by the person, may make an anatomical gift on behalf of the person; and a guardian may make an anatomical gift on behalf of a ward. However, a parent, agent, or guardian may not make an anatomical gift of an individual's body or body part if the individual made an unrevoked anatomical gift of his or her body or the part, except that in limited instances the parent, agent, or guardian may expand the purpose of the individual's gift.

Effect of anatomical gift or refusal made during person's lifetime. Under the bill, if a person makes an anatomical gift on behalf of an individual during the individual's lifetime, no person, other than the person who made the anatomical gift, may amend or revoke the gift after the death of the individual. However, if an anatomical gift is made by or on behalf of an unemancipated minor during the minor's lifetime, a parent may revoke or amend the gift after the death of the minor. Also under the bill, if an unemancipated minor refused to make an anatomical gift, the minor's parent may revoke the refusal after the death of the minor.

Anatomical gift on behalf of a deceased or a person near death. The bill expands the list of persons who may make an anatomical gift on behalf of a deceased to include adult grandchildren, adults who exhibited special care and concern for the deceased, and any person who has authority to dispose of the body; and the bill elevates the priority of health care agents to make anatomical gifts. Under the bill, the priority for making an anatomical gift on behalf of a deceased is as follows: 1) health care agent; 2) spouse; 3) adult child; 4) parent; 5) adult sibling; 6) adult grandchild; 7) grandparent; 8) adult who exhibited special care and concern for the deceased; 9) guardian; and 10) any other person who has authority to dispose of the body. The bill further provides that these persons may make an anatomical gift on behalf of an individual who is "near death," not just after death.

Under the bill, if there is disagreement among people who have equal priority to make an anatomical gift on behalf of a deceased or an individual who is near death, a gift may be made by a majority of the people. An anatomical gift made on behalf

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of a deceased or an individual who is near death may be amended by a person who has higher priority to make the gift, except that, if multiple people have the same higher priority to amend the gift, a majority is needed for amendment. An anatomical gift may be revoked by a person with higher priority to make a gift, except that, if multiple people have the same higher priority to revoke the gift, at least half must agree for the revocation to take effect. A revocation is not effective if an incision has been made in the deceased or if invasive procedures have been begun to prepare a recipient for transplant.

Method of making an anatomical gift, refusal, amendment, or revocation. The bill allows persons to authenticate records of anatomical gifts, refusals, amendments, and revocations of anatomical gifts or refusals with an electronic signature. The bill permits a person to make an anatomical gift of his or her body or body parts by affixing a symbol or statement that indicates that the person has made an anatomical gift, such as an organ donor sticker, on his or her driver's license or identification card. A person who has a terminal illness or injury may make an anatomical gift by oral communication to two adults, at least one of whom is a disinterested witness. Further, a person may make an anatomical gift of his or her body or body parts by authorizing inclusion of his or her intent to make an anatomical gift in a donor registry. Under the bill, a parent, health care agent, or guardian who has authority to make a gift on behalf of another person during the person's lifetime may do so by signing a record of gift or including the gift in a donor registry. Finally, the bill allows a person to make a gift on behalf of a deceased or an individual who is near death by means of an oral communication that is electronically recorded, or an oral communication that is contemporaneously reduced to a record that is signed by the person receiving the communication.

The bill permits additional methods of amending and revoking anatomical gifts or refusals. Under the bill a person may amend an anatomical gift or refusal by executing a subsequent gift or refusal that is inconsistent with the first. And, a person may revoke an anatomical gift or refusal that was made in a record by destroying the record, or that part of the record, in which it is made.

Procurement procedures. The bill codifies federal law requiring hospitals to enter into agreements with OPOs, tissue banks, and eye banks (procurement organizations) for the procurement and use of body parts, and requiring hospitals to notify OPOs of deaths and imminent deaths. The bill also codifies federal law regarding contacting family members of deceased persons to inform them of their options to make or refuse to make anatomical gifts.

The bill requires the Department of Transportation to provide information in its driver's license and identification card files regarding organ donor status to a procurement organization upon request. Under the bill, when a hospital notifies a procurement organization of the death or imminent death of a person, unless the person made an unrevoked refusal, the procurement organization may conduct any reasonable examination to determine whether the person's body parts are medically suitable for transplantation, therapy, research, or education, including an examination of the person's medical or dental records. The bill prohibits the withholding or withdrawing of measures to ensure the medical suitability of a body

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part for donation during such examination, unless the hospital or procurement organization knows that the person expressed a contrary intent. If a procurement organization determines that any of the person's body parts are medically suitable for transplantation, therapy, research, or education, the procurement organization must search for a person who has authority to make an anatomical gift of the body parts. Finally, the procurement organization must inform any person or organization who is to receive a donated body or body part of relevant information regarding the anatomical gift. A person or organization who receives a donated body or body part may conduct a reasonable examination, including an examination of the donor's medical or dental records.

Interaction between anatomical gifts and health care power of attorney or do-not-resuscitate order. The bill provides that if a person executed a health care power of attorney or a do-not-resuscitate order and the person's body parts may be the subject of an anatomical gift, measures to ensure the medical suitability of body parts for transplantation may not be withdrawn or withheld from the person unless the health care power of attorney or do-not-resuscitate order expressly provides to the contrary.

Receipt and use of donated bodies or body parts. The bill adds tissue banks and eye banks to the list of persons and organizations who may accept donated body parts and establishes rules governing who receives donated bodies and body parts. The bill provides generally, that unless an anatomical gift names a specific person or organization to receive a donated body or body part, organs, other than eyes, go to an OPO, tissues go to a tissue bank, and eyes go to an eye bank. Under the bill, if an anatomical gift of a body part is designated for a specific individual for transplantation and the body part cannot be transplanted into that individual, the body part passes to the appropriate OPO, tissue bank, or eye bank. If no recipient is named in an anatomical gift, and more than one purpose is designated, the donated body parts must be made available first for transplantation or therapy. If no recipient and no purpose are identified in an anatomical gift, or if only a general intent to make a donation is specified, for example by use of an organ donor sticker, the body parts may be used only for transplantation or therapy. A person may not accept an anatomical gift of a body or body part if the person has actual knowledge that the anatomical gift was not validly made or actual knowledge that the anatomical gift was revoked.

Immunity and liability. In addition to the civil and criminal immunity provided under current law, this bill provides that a person who acts, or attempts in good faith to act, in accordance with the anatomical gift law of this state or applicable anatomical gift law of another state or country is immune from liability for the act in administrative proceedings. The bill also provides that although emergency service and hospital personnel who are required to search for a record of an anatomical gift or refusal may not be held criminally or civilly liable for failure to search for and deliver such records, they may be subject to administrative sanctions for such a failure.

Penalty for falsifying a record of anatomical gift or refusal. The bill makes it a crime to intentionally falsify, forge, conceal, deface, or obliterate a record of an

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anatomical gift or refusal or an amendment or revocation of such a record. The maximum penalty for a violation is imprisonment not to exceed six years, a fine not to exceed \$50,000, or both.

Validity of anatomical gifts and choice of law. The bill provides that an anatomical gift is valid in this state if it is made in accordance with the laws of this state, the laws of the state or country where it was made, or the laws of the state or country in which the person who made the gift was domiciled, had a place of residence, or was a national at the time the gift was made. Under the bill, the laws of this state apply to the interpretation of any gift that is valid in this state. The bill specifies that a person may presume that an anatomical gift or amendment is valid unless the person has actual knowledge that it was not validly made or was revoked. The bill also specifies that a person may, in determining whether an individual has authority to make an anatomical gift on behalf of a deceased or someone who is near death, rely on the representation of the individual as to his or her relation to the subject of the anatomical gift (other than as a health care agent or guardian).

Donor registry. The bill provides that the Department of Health and Family Services (DHFS) may establish a donor registry, and if it does, that the Department of Transportation must cooperate with DHFS in establishing the registry.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 71.05 (10) (i) 1. of the statutes is amended to read:

2 71.05 **(10)** (i) 1. Subject to the conditions in this paragraph, an individual may

3 subtract up to \$10,000 from federal adjusted gross income if he or she, or his or her

4 dependent who is claimed under section 151 (c) of the Internal Revenue Code, while

5 living, donates ~~one or more of his or her human organs~~ all or part of his or her liver,

6 pancreas, kidney, intestine, lung, or bone marrow to another human being for human

7 organ transplantation, as defined in s. 146.345 (1), ~~except that in this paragraph,~~

8 “~~human organ~~” means ~~all or part of a liver, pancreas, kidney, intestine, lung, or bone~~

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1 marrow (b). A subtract modification that is claimed under this paragraph may be
2 claimed in the taxable year in which the ~~human organ~~ transplantation occurs.

3 **SECTION 2.** 146.345 (title), (1) (a), (b) and (c) and (2) of the statutes are amended
4 to read:

5 **146.345 (title) Sale of human organs parts prohibited.**

6 (1) (a) “Human organ” ~~means a human kidney, liver, heart, lung, pancreas,~~
7 ~~bone marrow, cornea, eye, bone or skin or any other human organ specified by the~~
8 ~~department by rule. “Human organ” part has the meaning given for “part” in s.~~
9 157.06 (2) (n), except that “human part” does not mean human whole blood, blood
10 plasma, a blood product or a blood derivative or human semen.

11 (b) “~~Human organ transplantation~~” “Transplantation” means the medical
12 procedure by which transfer of a human organ part is made from the body of a person
13 to the body of another person.

14 (c) “Valuable consideration” does not include reasonable payment associated
15 with the removal, transportation, implantation, processing, preservation, quality
16 control ~~or, storage, or disposal~~ of a human organ part or an expense of travel, housing
17 or lost wages incurred by a human organ part donor in connection with donation of
18 the human organ part.

19 (2) No person may knowingly and for valuable consideration acquire, receive
20 or otherwise transfer any human organ part for use in ~~human organ~~ transplantation.

21 **SECTION 3.** 146.82 (2) (a) 19. of the statutes is amended to read:

22 146.82 (2) (a) 19. To ~~an organ~~ a procurement organization by a hospital
23 pursuant to s. 157.06 (5) (b) 1, as defined in s. 157.06 (2) (p), for the purpose of
24 conducting an examination to ensure the medical suitability of a body part that is or
25 could be the subject of an anatomical gift under s. 157.06.

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1 PERSON OR PERSONS WHOM YOU HAVE SPECIFIED. YOU MAY STATE IN
2 THIS DOCUMENT ANY TYPES OF HEALTH CARE THAT YOU DO OR DO NOT
3 DESIRE, AND YOU MAY LIMIT THE AUTHORITY OF YOUR HEALTH CARE
4 AGENT. IF YOUR HEALTH CARE AGENT IS UNAWARE OF YOUR DESIRES
5 WITH RESPECT TO A PARTICULAR HEALTH CARE DECISION, HE OR SHE IS
6 REQUIRED TO DETERMINE WHAT WOULD BE IN YOUR BEST INTERESTS IN
7 MAKING THE DECISION.

8 THIS IS AN IMPORTANT LEGAL DOCUMENT. IT GIVES YOUR AGENT
9 BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. IT
10 REVOKES ANY PRIOR POWER OF ATTORNEY FOR HEALTH CARE THAT YOU
11 MAY HAVE MADE. IF YOU WISH TO CHANGE YOUR POWER OF ATTORNEY
12 FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY
13 DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN
14 YOUR PRESENCE, BY SIGNING A WRITTEN AND DATED STATEMENT OR BY
15 STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF
16 YOU REVOKE, YOU SHOULD NOTIFY YOUR AGENT, YOUR HEALTH CARE
17 PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY.
18 IF YOUR AGENT IS YOUR SPOUSE AND YOUR MARRIAGE IS ANNULLED OR
19 YOU ARE DIVORCED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT
20 IS INVALID.

21 YOU MAY ALSO USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE
22 AN ANATOMICAL GIFT UPON YOUR DEATH. IF YOU USE THIS DOCUMENT
23 TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT, THIS DOCUMENT
24 REVOKES ANY PRIOR DOCUMENT RECORD OF GIFT THAT YOU MAY HAVE
25 MADE. YOU MAY REVOKE OR CHANGE ANY ANATOMICAL GIFT THAT YOU

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1 MAKE BY THIS DOCUMENT BY CROSSING OUT THE ANATOMICAL GIFTS
2 PROVISION IN THIS DOCUMENT.

3 DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND
4 IT.

5 IT IS SUGGESTED THAT YOU KEEP THE ORIGINAL OF THIS
6 DOCUMENT ON FILE WITH YOUR PHYSICIAN.”

7 **SECTION 6.** 157.06 of the statutes is repealed and recreated to read:

8 **157.06 Anatomical gifts. (2) DEFINITIONS.** In this section:

9 (a) “Agent” means a health care agent, as defined in s. 155.01 (4), or an
10 individual who is expressly authorized in a record that is signed by a principal to
11 make an anatomical gift of the principal’s body or part.

12 (b) “Anatomical gift” means a donation of all or part of a human body to take
13 effect after the donor’s death for the purpose of transplantation, therapy, research,
14 or education.

15 (c) “Decedent” means a deceased individual.

16 (d) “Disinterested witness” means a witness who is not any of the following:

17 1. The spouse, child, parent, sibling, grandchild, grandparent, or guardian of
18 the individual who makes, amends, revokes, or refuses to make an anatomical gift.

19 2. A person who exhibits special care and concern, except as a compensated
20 health care provider, for the individual who makes, amends, revokes, or refuses to
21 make an anatomical gift.

22 3. Any other person to whom the anatomical gift could pass under sub. (11).

23 (e) “Donor” means an individual whose body or part is the subject of an
24 anatomical gift.

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1 (f) "Donor registry" means a database that contains records of anatomical gifts
2 and amendments to or revocations of anatomical gifts.

3 (g) "Driver's license" means a license or permit to operate a vehicle, whether
4 or not conditions are attached to the license or permit, that is issued by the
5 department of transportation under ch. 343.

6 (h) "Eye bank" means a person that is licensed, accredited, or regulated under
7 federal or state law to engage in the recovery, screening, testing, processing, storage,
8 or distribution of human eyes or portions of human eyes.

9 (i) "Guardian" means a person appointed by a court to make decisions
10 regarding the support, care, education, health, or welfare of an individual, and does
11 not include a guardian ad litem.

12 (j) "Hospital" means a facility approved as a hospital under s. 50.35 or a facility
13 operated as a hospital by the federal government, a state, or a political subdivision
14 of a state.

15 (k) "Identification card" means an identification card issued by the department
16 of transportation under s. 343.50.

17 (L) "Organ procurement organization" means a person designated by the
18 Secretary of the U.S. Department of Health and Human Services as an organ
19 procurement organization.

20 (m) "Parent" has the meaning given under s. 48.02 (13).

21 (n) "Part" means a vascularized organ, eye, or tissue of a human being. "Part"
22 does not mean a whole human body.

23 (o) "Physician" means an individual authorized to practice medicine or
24 osteopathy under the laws of any state.

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1 (p) “Procurement organization” means an eye bank, organ procurement
2 organization, or tissue bank.

3 (q) “Prospective donor” means an individual who is dead or near death and has
4 been determined by a procurement organization to have a part that could be
5 medically suitable for transplantation, therapy, research, or education. An
6 individual who has refused to make an anatomical gift as provided under sub. (7) is
7 not a prospective donor.

8 (r) “Reasonably available” means able to be contacted by a procurement
9 organization without undue effort and willing and able to act in a timely manner
10 consistent with existing medical criteria necessary for the making of an anatomical
11 gift.

12 (s) “Record” means information that is inscribed on a tangible medium or that
13 is stored in an electronic or other medium and is retrievable in a perceivable form.

14 (t) “Record of gift” means a donor card or other record used to make an
15 anatomical gift, including a statement or symbol on a driver’s license or
16 identification card or in a donor registry.

17 (u) “Record of refusal” means a record created under sub. (7) that expressly
18 states an intent to bar other persons from making an anatomical gift of an
19 individual’s body or part.

20 (v) “Sign” means to do any of the following with present intent to authenticate
21 or adopt a record:

22 1. Execute or adopt a signature or tangible symbol.

23 2. Attach to or logically associate with the record an electronic symbol, sound,
24 or process.

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1 (w) "Technician" means an individual determined to be qualified to remove or
2 process parts by an appropriate organization that is licensed, accredited, or
3 regulated under federal or state law and includes an enucleator.

4 (x) "Tissue" means a portion of the human body other than a vascularized organ
5 or eye and does not include blood unless the blood is donated for the purpose of
6 research or education.

7 (y) "Tissue bank" means a person that is licensed, accredited, or regulated
8 under federal or state law to engage in the recovery, screening, testing, processing,
9 storage, or distribution of tissue.

10 (z) "Transplant hospital" means a hospital that furnishes organ transplants
11 and other medical and surgical specialty services required for the care of transplant
12 patients.

13 (zm) "Vascularized organ" means a heart, lung, liver, pancreas, kidney,
14 intestine, or other organ that requires the continuous circulation of blood to remain
15 useful for purposes of transplantation.

16 **(2m) SIGNING FOR A PERSON WHO IS PHYSICALLY UNABLE.** If an individual who is
17 physically unable to sign a record under sub. (5) (a) 4. or (b) 1., (6) (a) 1., (b) 1., (c) 1.,
18 or (d) 1., or (7) (a) 1. or (b) 1. directs another to sign the record on his or her behalf,
19 the signature of the other individual authenticates the record as long as all of the
20 following conditions are satisfied:

21 (a) The signature of the other individual is witnessed by at least two adults, at
22 least one of whom is a disinterested witness.

23 (b) The witnesses sign the record at the request of the individual who is
24 physically unable to sign.

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1 (c) The record includes a statement that it was signed and witnessed at the
2 request of the individual who is physically unable to sign.

3 (4) WHO MAY MAKE AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. Except as
4 provided in subs. (7) and (8), any of the following may during the life of a donor make
5 an anatomical gift of the donor's body or part in the manner provided in sub. (5):

6 (a) The donor, if he or she is at least 15 and one-half years of age or is an
7 emancipated minor.

8 (b) An agent of the donor, unless the donor's power of attorney for health care
9 instrument under ch. 155 or some other record prohibits the agent from making an
10 anatomical gift.

11 (c) A parent of the donor, if the donor is an unemancipated minor and does not
12 object to the making of the anatomical gift.

13 (d) A guardian of the donor unless a health care agent under ch. 155 has
14 authority to make an anatomical gift of the donor's body or part.

15 (5) MANNER OF MAKING AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) A donor
16 under sub. (4) (a) may make an anatomical gift by doing any of the following:

17 1. Affixing to, or authorizing a person to imprint on, the donor's driver's license
18 or identification card a statement or symbol that indicates that the donor has made
19 an anatomical gift.

20 2. Including an anatomical gift in his or her will.

21 3. If the donor has a terminal illness or injury, communicating the anatomical
22 gift by any means to at least two adults, at least one of whom is a disinterested
23 witness.

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1 4. Signing a donor card or other record that includes an anatomical gift or, if
2 physically unable to sign a record, by directing another individual to sign the record
3 as provided in sub. (2m).

4 5. Authorizing a person to include in a donor registry a statement or symbol
5 that indicates that the donor has made an anatomical gift.

6 (b) A person under sub. (4) (b) to (d) may make an anatomical gift of a donor's
7 body or part during the donor's life by doing any of the following:

8 1. Signing a donor card or other record that includes an anatomical gift or, if
9 physically unable to sign a record, by directing another to sign the record as provided
10 in sub. (2m).

11 2. Authorizing another to include in a donor registry a statement or symbol that
12 indicates that the person has made an anatomical gift of the donor's body or part.

13 (c) The revocation, suspension, expiration, or cancellation of a driver's license
14 or identification card on which an anatomical gift has been made does not invalidate
15 the anatomical gift.

16 (d) An anatomical gift made by will takes effect upon the donor's death whether
17 or not the will is probated. Invalidation of the will after the donor's death does not
18 invalidate the anatomical gift.

19 **(6) AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH.** (a) Subject
20 to sub. (8), a donor may amend an anatomical gift of his her body or part by doing any
21 of the following:

22 1. Signing a record that amends the anatomical gift or, if physically unable to
23 sign, directing another to sign the record as provided in sub. (2m).

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1 2. Subsequently executing a record of gift that amends a previously executed
2 anatomical gift or a portion of a previously executed anatomical gift either expressly
3 or by inconsistency.

4 3. If the anatomical gift was not made in a will and the donor has a terminal
5 illness or injury, communicating in any manner an amendment of the anatomical gift
6 to at least two adults, at least one of whom is a disinterested witness.

7 4. If the anatomical gift was made in a will, amending the will.

8 (b) Subject to sub. (8), a donor may revoke an anatomical gift of his or her body
9 or part by doing any of the following:

10 1. Signing a record that revokes the anatomical gift or, if physically unable to
11 sign, directing another to sign the record as provided in sub. (2m).

12 2. Subsequently executing a record of gift that revokes a previously executed
13 anatomical gift or a portion of a previously executed anatomical gift either expressly
14 or by inconsistency.

15 3. If the anatomical gift was not made in a will and if the donor has a terminal
16 illness or injury, communicating in any manner the revocation of the anatomical gift
17 to at least two adults, at least one of whom is a disinterested witness.

18 4. If the anatomical gift was made in a will, amending or revoking the will.

19 5. If the anatomical gift was made in a record of gift, destroying or cancelling
20 the record of gift, or the portion of the record of gift used to make the anatomical gift,
21 with intent to revoke the anatomical gift.

22 (c) Subject to sub. (8), a person who is authorized to make an anatomical gift
23 under sub. (4) (b) to (d) may amend an anatomical gift of a donor's body or part before
24 the donor's death by doing any of the following:

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1 1. Signing a record that amends the anatomical gift or, if physically unable to
2 sign, directing another to sign the record as provided in sub. (2m).

3 2. Subsequently executing a record of gift that amends a previously executed
4 anatomical gift or a portion of a previously executed anatomical gift either expressly
5 or by inconsistency.

6 (d) Subject to sub. (8), a person who is authorized to make an anatomical gift
7 under sub. (4) (b) to (d) may revoke an anatomical gift of a donor's body or part before
8 the donor's death by doing any of the following:

9 1. Signing a record that revokes the anatomical gift or, if physically unable to
10 sign, directing another to sign the record as provided in sub. (2m).

11 2. Subsequently executing a record of gift that revokes a previously executed
12 anatomical gift or a portion of a previously executed anatomical gift either expressly
13 or by inconsistency.

14 3. If the anatomical gift was made in a record of gift, destroying or cancelling
15 the record of gift, or the portion of the record of gift used to make the anatomical gift,
16 with intent to revoke the anatomical gift.

17 **(7) REFUSAL TO MAKE AN ANATOMICAL GIFT; EFFECT OF REFUSAL.** (a) An individual
18 may refuse to make an anatomical gift of the individual's body or part by doing any
19 of the following:

20 1. Signing a record refusing to make an anatomical gift or, if physically unable
21 to sign, directing another to sign the record as provided in sub. (2m).

22 2. Including a refusal to make an anatomical gift in the individual's will,
23 whether or not the will is admitted to probate or invalidated after the individual's
24 death.

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1 3. If the individual has a terminal illness or injury, communicating in any
2 manner a refusal to make an anatomical gift to at least two adults, at least one of
3 whom is a disinterested witness.

4 (b) An individual who has made a refusal to make an anatomical gift under this
5 subsection may amend or revoke the refusal to make an anatomical gift by doing any
6 of the following:

7 1. Signing a record amending or revoking the refusal to make an anatomical
8 gift or, if physically unable to sign, directing another to sign the record as provided
9 in sub. (2m).

10 2. If the refusal to make an anatomical gift was made in the individual's will,
11 amending or revoking the will, whether or not the will is admitted to probate or
12 invalidated after the individual's death.

13 3. If the individual has a terminal illness or injury, communicating in any
14 manner an amendment to or revocation of the refusal to make an anatomical gift to
15 at least two adults, at least one of whom is a disinterested witness.

16 4. Subsequently making an anatomical gift as provided under sub. (5) (a) that
17 is inconsistent with the refusal to make an anatomical gift.

18 5. If the refusal to make an anatomical gift was made in a record of refusal,
19 destroying or canceling the record of refusal, or the portion of the record of refusal,
20 that evidenced the refusal to make an anatomical gift, with intent to revoke the
21 refusal to make an anatomical gift.

22 (c) Except as provided in sub. (8) (h), in the absence of an express, contrary
23 indication by an individual set forth in a refusal to make an anatomical gift under
24 this subsection, the individual's unrevoked refusal to make an anatomical gift under

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1 this subsection of his or her body or part bars all other persons from making an
2 anatomical gift of the individual's body or part.

3 **(8) PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION.** (a)
4 Except as provided in par. (g) and subject to par. (f), in the absence of an express,
5 contrary indication by the donor, a person other than the donor may not make,
6 amend, or revoke an anatomical gift of the donor's body or part if the donor has made
7 an unrevoked anatomical gift of his or her body or that part under sub. (5) (a) or an
8 amendment to an anatomical gift of the donor's body or that part under sub. (6) (a).

9 (b) A donor's revocation of an anatomical gift of the donor's body or part under
10 sub. (6) (b) is not a refusal to make an anatomical gift and does not bar another person
11 authorized to make an anatomical gift under sub. (4) from making an anatomical gift
12 of the donor's body or part under sub. (5) and does not bar a person who is authorized
13 to make an anatomical gift under sub. (9) from making an anatomical gift under sub.
14 (10).

15 (c) If a person other than the donor makes an unrevoked anatomical gift of the
16 donor's body or part under sub. (5) (b) or an amendment to an anatomical gift of the
17 donor's body or part under sub. (6) (c), another person may not amend or revoke the
18 anatomical gift under sub. (10) or otherwise make an anatomical gift of the body or
19 part under sub. (10).

20 (d) If a person other than the donor revokes an anatomical gift of the donor's
21 body or part under sub. (6) (d), the revocation does not bar another person from
22 making an anatomical gift of the donor's body or part under sub. (5) or (10).

23 (e) An anatomical gift of a part of a donor's body that is made under sub. (5) or
24 in an amendment under sub. (6), absent an express, contrary indication by the donor
25 or other person who made the anatomical gift, is not a refusal by the donor to make

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1 an anatomical gift of another part of the donor's body or a limitation on a later
2 anatomical gift of another part of the donor's body.

3 (f) An anatomical gift of a part that is made under sub. (5) or in an amendment
4 under sub. (6) for a specified purpose for which an anatomical gift may be made,
5 absent an express, contrary indication by the person who made the anatomical gift,
6 does not limit a person from making an anatomical gift of the part under sub. (5), (6),
7 or (10) for any of the other purposes for which an anatomical gift may be made.

8 (g) If a donor who is an unemancipated minor dies, a parent of the donor who
9 is reasonably available may revoke or amend an anatomical gift of the donor's body
10 or part.

11 (h) If an unemancipated minor who has made a refusal to make an anatomical
12 gift under sub. (7) dies, a reasonably available parent of the minor may revoke the
13 minor's refusal to make an anatomical gift.

14 **(9) WHO MAY MAKE AN ANATOMICAL GIFT NEAR OR UPON THE DONOR'S DEATH.** (a)
15 Except as provided in subs. (7) and (8) and subject to pars. (b) and (c), any member
16 of the following classes of persons, in the order of priority listed, who is reasonably
17 available may, in the manner provided in sub. (10), make an anatomical gift of the
18 body or part of an individual who is near death or has died:

19 1. A person who is the individual's agent near or at the time of the individual's
20 death and has authority under sub. (4) (b) to make an anatomical gift of the
21 decedent's body or part.

22 2. The spouse of the individual.

23 3. The adult children of the individual.

24 4. The parents of the individual.

25 5. The adult siblings of the individual.

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1 6. The adult grandchildren of the individual.

2 7. The grandparents of the individual.

3 8. Adults who exhibited special care and concern, except as a compensated
4 health care provider, for the individual.

5 9. Persons who were guardians of the individual near or at the time of the
6 individual's death.

7 10. Any other persons who have authority to dispose of the individual's body.

8 (b) If the members of a class of persons under par. (a) 1., 3., 4., 5., 6., 7., or 9.
9 have priority to make an anatomical gift of an individual's body or part under par.
10 (a) and the class consists of more than one member, any member of the class may
11 make an anatomical gift unless that member or the person to whom the anatomical
12 gift will pass under sub. (11) has actual knowledge of an objection by another member
13 of the class, in which case the anatomical gift may be made only by a majority of
14 members of the class who are reasonably available.

15 (c) A person may not make an anatomical gift of an individual's body or part
16 under this subsection if a person who is a member of a class with higher priority
17 under par. (a) is reasonably available.

18 **(10) MANNER OF MAKING, AMENDING, OR REVOKING AN ANATOMICAL GIFT NEAR OR**
19 **UPON DONOR'S DEATH.** (a) A person authorized under sub. (9) to make an anatomical
20 gift of an individual's body or part may do so by doing any of the following:

21 1. Signing a record of gift.

22 2. Subject to sub. (25m) (c), making an oral communication of an anatomical
23 gift that is electronically recorded.

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1 3. Subject to sub. (25m) (c), making an oral communication of an anatomical
2 gift that is contemporaneously reduced to a record and that is signed by the
3 individual receiving the oral communication.

4 (b) A member of a class of persons that has higher priority to make an
5 anatomical gift under sub. (9) than the person who made an anatomical gift under
6 par. (a) and who is reasonably available may amend the anatomical gift in the
7 manner provided in par. (d), except that if more than one member of the class with
8 higher priority is reasonably available, the agreement of a majority of the reasonably
9 available members is required to amend the anatomical gift.

10 (c) 1. Subject to subd. 2., a member of a class of persons that has higher priority
11 to make an anatomical gift under sub. (9) than the person who made an anatomical
12 gift under par. (a) may revoke the anatomical gift in the manner provided in par. (d),
13 except that if more than one member of the class with higher priority is reasonably
14 available, the agreement of at least one-half of the reasonably available members
15 is required to revoke the anatomical gift.

16 2. A revocation of an anatomical gift under subd. 1. is effective only if before
17 an incision is made to remove a part from the donor's body or before invasive
18 procedures have been begun to prepare the recipient, the procurement organization,
19 transplant hospital, or physician or technician has actual knowledge of the
20 revocation.

21 (d) A person who is authorized to amend or revoke an anatomical gift under par.
22 (b) or (c) may do so orally or by including the amendment or revocation in a record.

23 **(11) PERSONS THAT MAY RECEIVE ANATOMICAL GIFTS; PURPOSE OF GIFTS.** (a) An
24 anatomical gift may be made to any of the following persons:

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1 1. For the purpose of research or education, a hospital, accredited medical
2 school, dental school, college, university, organ procurement organization, or other
3 appropriate person.

4 2. Subject to par. (b) 1., an individual designated by the person making the
5 anatomical gift into which individual's body a part is intended to be transplanted.

6 3. An eye bank or tissue bank.

7 4. An organ procurement organization, as custodian of a part for transplant or
8 therapy.

9 (b) 1. If a part that is the subject of an anatomical gift made to an individual
10 under par. (a) 2. cannot be transplanted into the individual, the part passes as
11 provided in par. (f) absent an express, contrary indication by the person making the
12 anatomical gift.

13 2. If tissue that is the subject of an anatomical gift made to an organ
14 procurement organization is unsuitable for transplantation or therapy, the organ
15 procurement organization may give the tissue to an appropriate person for research
16 or education if authorized to do so by the person who made the anatomical gift.

17 (c) If an anatomical gift of one or more parts does not name a person under (a)
18 1. to 4. as the person to whom the anatomical gift is made, but identifies the purpose
19 of the anatomical gift, all of the following apply:

20 1. If the purpose of the anatomical gift is transplantation or therapy, the part
21 passes as provided in par. (f).

22 2. If the purpose of the anatomical gift is research or education, the part passes
23 to the appropriate procurement organization.

24 3. If an anatomical gift is for more than one purpose, but the purposes are not
25 set forth in any priority, the part shall be used for transplantation or therapy, if

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1 suitable, and if the part cannot be used for transplantation or therapy, may be used
2 for research or education.

3 (d) If an anatomical gift of one or more parts does not name a person under par.

4 (a) 1. to 4. as the person to whom the anatomical gift is made and does not identify
5 the purpose of the anatomical gift, the parts may be used only for transplantation or
6 therapy, and the parts pass as provided in par. (f).

7 (e) If an anatomical gift specifies only a general intent to make an anatomical
8 gift by words such as “donor,” “organ donor,” or “body donor,” or by a symbol or
9 statement of similar meaning, the anatomical gift may be used only for the purpose
10 of transplantation or therapy, and the parts pass as provided in par. (f).

11 (f) If par. (b) 1., (c) 1., (d), or (e) applies, all of the following apply:

12 1. If the part is an eye, the part passes to the appropriate eye bank.

13 2. If the part is tissue, the part passes to the appropriate tissue bank.

14 3. If the part is an organ, the part passes to to the appropriate organ
15 procurement organization as custodian of the organ.

16 (g) If a body or part that is the subject of an anatomical gift does not pass
17 pursuant to pars. (a) to (e) or is not used for transplantation, therapy, research, or
18 education, custody of the body or part passes to the person who is obligated to dispose
19 of the body or part.

20 (h) A person may not accept an anatomical gift of a decedent’s body or part if
21 the person has actual knowledge that the anatomical gift was not made as provided
22 in sub. (5), (6), or (10) or if the person has actual knowledge that the decedent made
23 a refusal to make an anatomical gift under sub. (7) that was not revoked. For
24 purposes of this paragraph, if a person has actual knowledge that an anatomical gift
25 was made on a record of gift, the person is deemed to have actual knowledge of any

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1 amendment or revocation of the anatomical gift or any refusal to make an anatomical
2 gift that is on the same record of gift.

3 (i) Except as provided under par. (a) 2., nothing in this section affects the
4 allocation of organs for transplantation or therapy.

5 **(12) SEARCH AND NOTIFICATION.** (a) If any of the following persons reasonably
6 believes an individual to be dead or near death, the person shall make a reasonable
7 search of the individual for a record of gift or a record of refusal or other information
8 identifying the individual as a donor or as an individual who has refused to make an
9 anatomical gift.

10 1. A law enforcement officer, fire fighter, emergency medical technician, first
11 responder, or ambulance service provider.

12 2. If no other source of information is immediately available, a hospital, as soon
13 as practical after the individual's arrival at the hospital.

14 (b) If a record of gift or record of refusal is located by a search under par. (a) 1.,
15 and the individual or deceased individual to whom the record or gift or record of
16 refusal relates is taken to a hospital, the person responsible for conducting the search
17 shall send the record of gift or record of refusal to the hospital.

18 (c) A person is immune from any criminal or civil liability for failure to
19 discharge the duties imposed under this subsection but may be subject to an
20 administrative sanction for such failure.

21 **(13) DELIVERY OF RECORD OF GIFT NOT REQUIRED; RIGHT TO EXAMINE.** (a) A record
22 of gift need not be delivered during the donor's lifetime to be effective.

23 (b) Upon or after an individual's death, a person who has possession of a record
24 of gift or a record of refusal relating to the individual's body or part shall allow any
25 person who is authorized to revoke, make, or object to the making of an anatomical

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1 gift of the individual's body or part, and any person to whom the body or part could
2 pass under sub. (11), to examine and copy the record of gift or record of refusal.

3 **(14) RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS.** (a) A
4 procurement organization shall do all of the following when a hospital refers an
5 individual who is near death or who is deceased to the procurement organization:

6 1. If the individual is a prospective donor, make a reasonable search for any
7 person under sub. (9) having priority to make an anatomical gift of the individual's
8 body or part.

9 2. If the individual referred is a minor who is a donor or who made an unrevoked
10 refusal to make an anatomical gift, unless the procurement organization has actual
11 knowledge that the minor was emancipated, conduct a reasonable search for the
12 parents of the minor and provide the parents an opportunity to revoke or amend the
13 anatomical gift or refusal relating to the minor.

14 3. If the procurement organization receives information about an anatomical
15 gift of the individual's body or part that under sub. (11) passes to a person other than
16 the procurement organization, promptly advise the other person of relevant
17 information regarding the anatomical gift.

18 (b) When a hospital refers an individual at or near death to a procurement
19 organization, the procurement organization may conduct any reasonable
20 examination to determine whether a part of the individual that is or could be the
21 subject of an anatomical gift is medically suitable for transplantation, therapy,
22 research, or education. Unless otherwise prohibited by law, an examination under
23 this paragraph may include an examination of all of the individual's medical or
24 dental records. During the examination period, measures necessary to ensure the
25 medical suitability of the part may not be withdrawn unless the hospital or

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1 procurement organization has actual knowledge that the individual expressed a
2 contrary intent.

3 (c) Unless otherwise prohibited by law, at any time after a donor's death, the
4 person to whom the donor's body or part passes under sub. (11) may conduct any
5 reasonable examination, including an examination of all of the donor's medical or
6 dental records, to determine the medical suitability of the donor's body or part for its
7 intended purpose.

8 (d) Subject to subs. (11) (g), (22m), and (23m), the rights of the person to whom
9 an anatomical gift of a part passes under sub. (11) are superior to the rights of all
10 others with respect to a part. The person may accept or reject an anatomical gift in
11 whole or in part. A person who accepts an anatomical gift of a part shall cause the
12 part to be removed from the donor's body after the death of the donor and before
13 embalming, burial, or cremation and without unnecessary mutilation.

14 (e) A person who accepts an anatomical gift of an entire body may, subject to
15 the terms of an anatomical gift and this section, allow embalming, burial, cremation,
16 or use of the remains of the body in a funeral service.

17 (f) A physician who attends a decedent at death or determines the time of death
18 may not participate in the procedures for removing or transplanting a part from the
19 decedent.

20 (g) A physician or technician may remove from the body of a donor a donated
21 part that the physician or technician is qualified to remove.

22 **(14m)** COORDINATION OF PROCUREMENT AND USE; DUTIES OF HOSPITALS. Each
23 hospital shall do all of the following:

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1 (a) Enter into agreements or affiliations with procurement organizations for
2 coordination of procurement and use of bodies and parts that are the subject of
3 anatomical gifts, including the following:

4 1. An agreement with an organ procurement organization to notify the organ
5 procurement organization or its designee in a timely manner of individuals whose
6 death is imminent or who have died in the hospital.

7 2. Agreements with at least one tissue bank and at least one eye bank to
8 cooperate in the retrieval, processing, preservation, storage, and distribution of
9 tissues and eyes to assure that all usable tissues and eyes are obtained from potential
10 donors, as long as such agreements do not interfere with the procurement of organs.

11 (b) Ensure, in collaboration with the organ procurement organization with
12 which the hospital has an agreement under par. (a) 1. that the family of each
13 potential donor is informed of its options to donate organs, tissues, or eyes or to refuse
14 to donate organs, tissues, or eyes.

15 (c) Ensure that the individual who requests family members of potential donors
16 to make anatomical gifts of organs, tissues, or eyes is either an organ procurement
17 representative or has completed a course on the methodology for approaching
18 persons to request that they make anatomical gifts, which course is designed in
19 conjunction with the tissue and eye bank community and offered or approved by the
20 organ procurement organization with which the hospital has an agreement under
21 par. (a) 1.

22 (d) Ensure that requests of family members of potential donors to make
23 anatomical gifts of organs, tissues, or eyes are made with discretion and sensibility
24 with respect to the circumstances, views, and beliefs of the families of potential
25 donors.

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1 (e) Ensure that the hospital works cooperatively with the procurement
2 organizations with which it has agreements with under par. (a) in educating staff on
3 donation issues, reviewing death records to improve identification of potential
4 donors, and maintaining potential donors while necessary testing and placement of
5 potential donated organs, tissues, and eyes takes place.

6 **(17) PROHIBITED ACTS RELATED TO RECORDS.** Any person who intentionally
7 falsifies, forges, conceals, defaces, or obliterates a record of gift, an amendment or
8 revocation of a record of gift, or a record of refusal for pecuniary gain is guilty of a
9 Class H felony, except that notwithstanding the maximum fine specified in s. 939.50
10 (3) (h), the person may be fined not more than \$50,000.

11 **(18) IMMUNITY.** (a) A person who acts, or in good faith attempts to act, in
12 accordance with this section or with the applicable anatomical gift law of another
13 state is not liable for the act in a civil action, criminal prosecution, or administrative
14 proceeding.

15 (b) A person who makes an anatomical gift and the person's estate are not liable
16 for any injury or damage that results from the making of the anatomical gift or the
17 use of the body or any part that is the subject of the anatomical gift.

18 (c) A person may rely on a representation made by an individual purporting to
19 be an individual listed under sub. (9) (a) 2., 3., 4., 5., 6., 7., or 8. as to the individual's
20 relation to a donor or prospective donor in determining whether an anatomical gift
21 of the donor's or prospective donor's body or part has been made, amended, or
22 revoked.

23 **(19) LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO MAKING OF ANATOMICAL GIFT;**
24 **PRESUMPTION OF VALIDITY.** (a) An anatomical gift is valid if made in accordance with
25 any of the following:

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1 1. This section.

2 2. The laws of the state or country where it was made.

3 3. The laws of the state or country where the individual making the anatomical
4 gift was domiciled, had a place of residence, or was a national at the time the
5 anatomical gift was made.

6 (b) If an anatomical gift is valid under this subsection, the law of this state
7 governs the interpretation of the anatomical gift.

8 (c) A person may presume that an anatomical gift or an amendment of an
9 anatomical gift is valid unless the person has actual knowledge that it was not
10 validly made or was revoked.

11 **(20) DONOR REGISTRY.** The department of health and family services may
12 establish a donor registry. If the department of health and family services
13 establishes a donor registry under this subsection, the department of transportation
14 shall cooperate with the department of health and family services in establishing the
15 donor registry. The department of health and family services shall promulgate
16 administrative rules governing any donor registry established under this
17 paragraph.

18 **(21) EFFECT OF ANATOMICAL GIFT ON ADVANCE HEALTH CARE DIRECTIVE.** If a
19 prospective donor executed a declaration, as defined in s. 154.02 (1), or a power of
20 attorney for health care instrument under ch. 155, measures necessary to ensure the
21 medical suitability of an organ for transplantation or therapy may not be withheld
22 or withdrawn from the prospective donor unless the declaration or power of attorney
23 for health care instrument expressly provides to the contrary.

24 **(22m) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; NO EVIDENCE OF**
25 ANATOMICAL GIFT. (ag) If a decedent is within the custody of a coroner or medical

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1 examiner and if there is no evidence that an anatomical gift of the decedent's body
2 or part has been made or that the decedent has refused to make an anatomical gift,
3 the coroner or medical examiner shall contact by telephone the organ procurement
4 organization designated for the region in which the death occurs. The coroner or
5 medical examiner shall provide the organ procurement organization with
6 information, if known to the coroner or medical examiner, concerning the decedent's
7 age, the cause of the decedent's death and, if available, the decedent's medical
8 history.

9 (am) The coroner or medical examiner may release and permit the removal of
10 a part from a decedent specified in par. (ag) within that official's custody, for
11 transplantation or therapy, including to a tissue bank under the requirements of sub.
12 (24m), if all of the following apply:

13 1. The official has received a request for the part from a hospital, physician, or
14 organ procurement organization.

15 2. The official has made a reasonable effort, taking into account the useful life
16 of the part, to locate and examine the decedent's medical records and, subject to sub.
17 (25m), inform persons listed in sub. (9) of their option to make, or object to making,
18 an anatomical gift.

19 3. The official does not have actual knowledge of a refusal to make an
20 anatomical gift or contrary indication by the decedent or of an objection by a person
21 having priority to act as listed in sub. (9).

22 4. The removal will be by a physician, except for the following:

23 a. In the case of eyes, the removal may be by a physician or by an enucleator.

24 b. In the case of tissue or bone, the removal may be by a physician or by a
25 technician.

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1 5. The removal will not interfere with any autopsy or investigation.

2 6. The removal will be in accordance with accepted medical standards.

3 7. Cosmetic restoration will be done to the decedent's body, if appropriate.

4 (b) A coroner or medical examiner who releases, and permits the removal of a
5 part under this subsection shall maintain a permanent record of the name of the
6 decedent, the name of the person making the request, the date and purpose of the
7 request, the part requested, and the name of the person to whom it was released.

8 **(23m)** AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; POTENTIAL DONATIONS
9 OF ORGANS AND TISSUE. (a) Subject to par. (b), for a decedent who meets the criteria
10 for a determination of death under s. 146.71, who is a donor, and who is within the
11 jurisdiction of a coroner or medical examiner under ch. 979, any vascularized organ
12 that is the subject of an anatomical gift may be removed by a physician, within a time
13 period compatible with preservation of the organ for purposes of transplantation or
14 therapy, if all of the following take place:

15 1. Immediately after the hospital in which the donor or potential donor is
16 located contacts the organ procurement organization designated for the region of
17 which the hospital is a part concerning the potential donation, the organ
18 procurement organization shall, by oral conversation, provide notice to the coroner
19 or medical examiner or his or her designee of the referral of the donor or potential
20 donor and shall provide notice of the referral to the district attorney or his or her
21 designee.

22 2. The coroner or medical examiner or his or her designee has the opportunity
23 to be present during the scheduled removal of the vascularized organ if, in the
24 judgment of the coroner, medical examiner, or designee, the organ may be necessary
25 in determining the cause of death.

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1 (b) If, in the judgment of the coroner, medical examiner, or designee specified
2 in par. (a) the vascularized organ may be necessary in determining the cause of
3 death, the coroner, medical examiner, or designee may order a biopsy of the
4 vascularized organ or, if the coroner, medical examiner, or designee is present during
5 the scheduled removal, he or she may deny removal of the vascularized organ. If
6 denial of removal is a possibility, the organ procurement organization shall make a
7 good faith effort to consult with a forensic pathologist designated by the coroner,
8 medical examiner, or designee as to the pathologist's opinion concerning the
9 necessity of the vascularized organ in determining the cause of death. If the biopsy
10 is ordered or the removal is denied, the coroner, medical examiner, or designee shall
11 specify, in writing as part of any death report required under ch. 979, any reasons
12 for determining that the vascularized organ may be involved in the cause of death.

13 (c) For a decedent specified under par. (a), as authorized under the
14 requirements of this section by the coroner, medical examiner, or designee with
15 jurisdiction over the decedent, any part other than a vascularized organ that is a
16 subject of an anatomical gift may be removed by a physician and any part that is
17 tissue or bone may be removed by a technician or tissue bank employee, within a time
18 period compatible with preservation of the part for purposes of transplantation or
19 therapy.

20 (d) A physician, technician, or tissue bank employee who removes
21 cardiovascular tissue from a decedent under this subsection shall, upon request of
22 the coroner or medical examiner, file with the coroner or medical examiner with
23 jurisdiction over the decedent a report detailing the condition of the cardiovascular
24 tissue and its relationship to the cause of death. The report may include a biopsy or
25 medically approved sample, if available, from the part.

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1 (e) 1. A physician who removes an organ from a decedent under this subsection
2 shall complete a form, as specified in sub. (26m) (a).

3 2. A physician, technician, or tissue bank employee who removes tissue, other
4 than cardiovascular tissue, from a decedent under this subsection shall complete a
5 form, as specified in sub. (26m) (b).

6 3. After completing a form under this paragraph, the physician, technician, or
7 tissue bank employee shall transmit the form to the coroner or medical examiner
8 with jurisdiction over the decedent.

9 **(24m)** AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; TISSUE BANKS. (a) 1. If
10 a decedent is within the custody of a coroner or medical examiner, and the death
11 occurred in a hospital, any release of the decedent for potential donation of tissue
12 shall be to the tissue bank with which the hospital has an agreement under sub.
13 (14m) (a) 2. However, if such a tissue bank is unwilling to receive the tissue donation,
14 the tissue bank shall so notify the coroner or medical examiner.

15 2. Upon receipt of a notification under subd. 1., the coroner or medical examiner
16 may notify any other tissue bank with which the coroner or medical examiner has
17 an agreement under par. (b) of the availability of the decedent as a potential tissue
18 donor.

19 3. Upon receipt of a notification under subd. 2., the tissue bank so notified, if
20 willing to receive the tissue donation, shall contact a reasonably available person,
21 under the priority established in sub. (9), to request that the person make an
22 anatomical gift of all or a part of the decedent's tissue.

23 4. If the coroner or medical examiner informs the hospital that subds. 2. and
24 3. apply and that consent has been given for an anatomical gift, the hospital shall
25 transfer the decedent to the coroner or medical examiner.

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1 (b) When a decedent is within the custody of a coroner or medical examiner, the
2 death occurred outside a hospital or the decedent was transferred to the coroner or
3 medical examiner under par. (a) 4., and the coroner or medical examiner refers the
4 decedent as a potential tissue donor, any such referral shall be made under the
5 following conditions:

6 1. Subject to subds. 2., 3., and 4., the coroner or medical examiner, after
7 considering a tissue bank's history, services, traditional referral patterns,
8 geographic service area, and tissue distribution record and any other criteria
9 required for consideration by the corporation counsel of the applicable county, enters
10 into a written, general referral agreement with one or more tissue banks to which
11 the coroner or medical examiner shall refer decedents for potential donation of
12 tissue.

13 2. Any agreement under subd. 1. is subject to review and approval by all of the
14 the following:

15 a. The corporation counsel of the applicable county.

16 b. The county board of the applicable county. Within 60 days after any approval
17 by the corporation counsel and transmittal of the agreement to the county board, the
18 county board may approve or disapprove the agreement. If the county board takes
19 no action, the agreement is approved.

20 3. A tissue bank under this paragraph is accredited by the American
21 Association of Tissue Banks or audited at least once every 2 years by an organization
22 that is accredited by the American Association of Tissue Banks.

23 4. All of the following applies to an agreement by a coroner or medical examiner
24 with one or more tissue banks to which the coroner or medical examiner refers
25 decedents for potential donation of tissue:

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1 a. Any such agreement that is entered into after April 13, 2006, shall conform
2 to the requirements of subds. 1. to 3.

3 b. Any such agreement that exists on April 13, 2006, shall conform to the
4 requirements of subds. 1. to 3. by October 1, 2007, unless the agreement expires
5 before that date and is not renegotiated or renewed under subd. 4. a.

6 **(25m)** CONSENT FOR OR LIMITATION ON CERTAIN USES OF BONES OR TISSUE;
7 REQUIREMENTS. (a) A hospital, organ procurement organization, tissue bank, coroner,
8 or medical examiner that provides a record of gift to a person who may make an
9 anatomical gift under sub. (4) or (9) shall include in the record of gift the following
10 sentences: "I understand that donated bones or tissues, including skin, may have
11 numerous uses, including for reconstructive and cosmetic purposes, and that
12 multiple organizations, including nonprofit and for-profit organizations, may
13 recover, process, or distribute the donations. I further understand that I may, by this
14 record, limit the use of the bones or tissues, including skin, that are donated or types
15 of organizations that recover, process, or distribute the donation."

16 (b) The record of gift under par. (a) shall include, following the 2nd sentence
17 required in par. (a), all of the following:

18 1. A line or space for the person who may make an anatomical gift to sign to
19 acknowledge that he or she has read the sentences specified in par. (a) or that the
20 sentences have been read aloud to him or her. Except in cases in which an anatomical
21 gift is executed by means that do not require the person making the anatomical gift
22 to sign a record of gift, failure of the person making the anatomical gift to sign in the
23 line or space is a refusal to make or an objection to making an anatomical gift of bones
24 or tissues.

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1 2. A line or space for the person making the anatomical gift to sign and specify
2 a limitation, if any, on the use of bones or tissues or on the types of organizations that
3 recover, process, or distribute the donation.

4 (c) If a person makes anatomical gift in the manner provided in sub. (10) (a) 2.
5 or 3., the individual receiving the oral communication shall read aloud to the person,
6 the sentences required under par. (a). If the anatomical gift is made in the manner
7 provided in sub. (10) (a) 3., the individual who reduces the anatomical gift to a record
8 shall note on the record that the person making the anatomical gift has been read
9 the sentences required under par. (a) and note any limitations that the person
10 making the anatomical gift imposes on the use of any bones or tissues that are the
11 subject of the anatomical gift or any limitations on the types of organizations that
12 recover, process, or distribute such bones or tissues.

13 (d) If a person who may make an anatomical gift under sub. (4) or (9) makes
14 an anatomical gift under this subsection, the hospital, organ procurement
15 organization, tissue bank, coroner, or medical examiner that provides to the person
16 a record of gift under par. (a) shall also provide the person with the telephone number
17 and address of the agency or organization that recovers the anatomical gift.

18 (e) The requester under par. (a) shall provide the person who may make an
19 anatomical gift under sub. (4) or (9) with a copy of any record of gift executed under
20 the requirements of this subsection.

21 **(26m)** FORMS FOR REMOVAL OF ORGANS AND CERTAIN TISSUES; RULES. The
22 department of health and family services shall promulgate rules prescribing all of
23 the following:

24 (a) A form for removal of organs for use under sub. (23m) (e) 1. and 3.

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1 (b) A form for removal of tissue, other than cardiovascular tissue, for use under
2 sub. (23m) (e) 2. and 3.

3 **(27m)** PENALTY. Whoever fails to comply with the requirement to provide
4 sentences under sub. (25m) (a) or (c) may be subject to a forfeiture of not less than
5 \$500 nor more than \$1,000 for each violation.

6 **(28m)** EFFECT OF PRIOR DOCUMENT OF GIFT. Notwithstanding the requirements
7 of this section, a document of gift that was made under the requirements of s. 157.06,
8 1987 stats., or s. 157.06, 2005 stats., is deemed to comply with the requirements of
9 this section.

10 **SECTION 7.** 230.35 (2d) (a) 2. of the statutes is amended to read:

11 230.35 **(2d)** (a) 2. “Human organ” ~~has the meaning given for “vascularized~~
12 ~~organ” in s. 157.06 (1) (L)~~ means a heart, lung, liver, pancreas, kidney, intestine, or
13 other organ that requires the continuous circulation of blood to remain useful for
14 purposes of transplantation.

15 **SECTION 8.** 252.15 (2) (a) 1. and (am) 1. and 2. and (5) (a) 5. of the statutes are
16 amended to read:

17 252.15 **(2)** (a) 1. Except as provided in subd. 1g., a health care provider who
18 procures, processes, distributes or uses a human body part or human tissue ~~donated~~
19 ~~as specified under s. 157.06 (6) (a) or (b)~~ that is the subject of an anatomical gift under
20 157.06 shall, without obtaining consent to the testing, test for the presence of HIV,
21 antigen or nonantigenic products of HIV or an antibody to HIV in order to assure
22 medical acceptability of the gift for the purpose intended. The health care provider
23 shall use as a test for the presence of HIV, antigen or nonantigenic products of HIV
24 or an antibody to HIV a test or series of tests that the state epidemiologist finds
25 medically significant and sufficiently reliable to detect the presence of HIV, antigen

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1 or nonantigenic products of HIV or an antibody to HIV. If the validated test result
2 of the donor from the test or series of tests performed is positive, the human body part
3 or human tissue donated for use or proposed for donation may not be used.

4 (am) 1. A health care provider who procures, processes, distributes or uses
5 human sperm ~~donated as specified under s. 157.06 (6) (a) or (b) that is the subject of~~
6 an anatomical gift under 157.06 shall, prior to the distribution or use and with
7 informed consent under the requirements of par. (b), test the proposed donor for the
8 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in
9 order to assure medical acceptability of the gift for the purpose intended. The health
10 care provider shall use as a test for the presence of HIV, antigen or nonantigenic
11 products of HIV or an antibody to HIV a test or series of tests that the state
12 epidemiologist finds medically significant and sufficiently reliable under s. 252.13
13 (1r) to detect the presence of HIV, antigen or nonantigenic products of HIV or an
14 antibody to HIV. The health care provider shall test the donor initially and, if the
15 initial test result is negative, shall perform a 2nd test on a date that is not less than
16 180 days from the date of the procurement of the sperm. No person may use the
17 donated sperm until the health care provider has obtained the results of the 2nd test.
18 If any validated test result of the donor for the presence of HIV, antigen or
19 nonantigenic products of HIV or an antibody to HIV is positive, the sperm donated
20 for use may not be used and, if donated, shall be destroyed.

21 2. A health care provider who procures, processes, distributes or uses human
22 ova ~~donated as specified under s. 157.06 (6) (a) or (b) that are the subject of an~~
23 anatomical gift under s. 157.06 shall, prior to the distribution or use and with
24 informed consent under the requirements of par. (b), test the proposed donor for the

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1 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in
2 order to assure medical acceptability of the gift for the purpose intended.

3 **(5)** (a) 5. To a health care provider who procures, processes, distributes or uses
4 a human body part ~~donated as specified under s. 157.06 (6) (a) or (b)~~ that is the subject
5 of an anatomical gift under s. 157.06, for the purpose of assuring medical
6 acceptability of the gift for the purpose intended.

7 **SECTION 9.** 343.17 (3) (b) of the statutes is amended to read:

8 343.17 **(3)** (b) The reverse side of the license shall contain an explanation of any
9 restriction codes or endorsement abbreviations used on the front of the license, in
10 sufficient detail to identify the nature of the restrictions or endorsements to a law
11 enforcement officer of this state or another jurisdiction. Except for a commercial
12 driver license, a part of the reverse side of each license shall be printed to serve as
13 a ~~document~~ record of gift under s. 157.06 (2) ~~(b) and (e)~~ (t) or a ~~document~~ record of
14 refusal ~~to make an anatomical gift~~ under s. 157.06 (2) ~~(i)~~ (u).

15 **SECTION 10.** 343.175 (1) of the statutes is amended to read:

16 343.175 **(1)** DEPARTMENT TO SOLICIT AND RECORD INFORMATION. As part of every
17 application for an original, duplicate, reinstated, reissued or renewal license or
18 endorsement, the department shall inquire whether the applicant desires to be an
19 organ donor. The department shall record the organ donor response in its file of the
20 person. If a procurement organization, as defined in s. 157.06 (2) (p), reasonably
21 identifies a person and requests the information recorded in the person's file under
22 this subsection, the department shall promptly provide this information to the
23 procurement organization.

24 **SECTION 11.** 343.175 (1r) of the statutes is amended to read:

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1 343.175 (1r) DEPARTMENT TO PROVIDE INFORMATION. In addition to the inquiry
2 under sub. (1), if the applicant is at least ~~18~~ 15 and one-half years of age, the
3 department shall orally state to the applicant that he or she has the opportunity to
4 indicate his or her willingness to be an organ donor. If the applicant indicates that
5 he or she is undecided in response to the inquiry under sub. (1), the department shall
6 provide the applicant with written information that all organ procurement
7 organizations and the department have together developed. If the applicant makes
8 an affirmative response to the inquiry under sub. (1), the department shall request
9 at that time that the applicant write on the license the information that is specified
10 under sub. (2) (ar) and affix a sticker, as described in sub. (3) (a), to the front side of
11 the license document.

12 **SECTION 12.** 343.175 (2) (title) of the statutes is amended to read:

13 343.175 (2) (title) ~~DOCUMENT~~ RECORD OF GIFT OR REFUSAL.

14 **SECTION 13.** 343.175 (2) (a) of the statutes is amended to read:

15 343.175 (2) (a) Except as provided in par. (ag), a part of the reverse side of each
16 license shall be printed to serve as a ~~document~~ record of gift under s. 157.06 (2) (b)
17 and (e) (t) or a ~~document~~ record of refusal to make an anatomical gift under s. 157.06
18 (2) (i) (u).

19 **SECTION 14.** 343.175 (2) (ag) of the statutes is amended to read:

20 343.175 (2) (ag) The department shall print a separate document to be issued
21 to all persons issued a commercial driver license and make provisions so that the
22 document may be attached to the reverse side of the license document along one edge.
23 This document shall serve as a ~~document~~ record of gift under s. 157.06 (2) (b) and (e)
24 (t) or a ~~document~~ record of refusal to make an anatomical gift under s. 157.06 (2) (i)
25 (u).

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1 **SECTION 15.** 343.175 (3) (a) of the statutes is renumbered 343.175 (3).

2 **SECTION 16.** 343.175 (3) (b) of the statutes is repealed.

3 **SECTION 17.** 343.50 (3) of the statutes is amended to read:

4 343.50 (3) DESIGN AND CONTENTS OF CARD. The card shall be the same size as
5 an operator's license but shall be of a design which is readily distinguishable from
6 the design of an operator's license and bear upon it the words "IDENTIFICATION
7 CARD ONLY". The information on the card shall be the same as specified under s.
8 343.17 (3). The card may serve as a document record of gift under s. 157.06 (2) ~~(b)~~
9 ~~and (c)~~ (t) and the holder may affix a sticker thereto as provided in s. 343.175 (3).
10 The card may also serve as a document record of refusal ~~to make an anatomical gift~~
11 under s. 157.06 (2) ~~(i)~~ (u). The card shall contain the holder's photograph and, if
12 applicable, shall be of the design specified under s. 343.17 (3) (a) 12.

13 **SECTION 18.** 343.50 (4m) (a) of the statutes is amended to read:

14 343.50 (4m) (a) As part of every application for an identification card, the
15 department shall inquire whether the applicant desires to be an organ donor. The
16 department shall record the organ donor response in its file of the person. If a
17 procurement organization, as defined in s. 157.06 (2) (p), reasonably identifies a
18 person and requests the information recorded in the person's file under this
19 paragraph, the department shall promptly provide this information to the
20 procurement organization.

21 **SECTION 19.** 343.50 (4m) (b) of the statutes is amended to read:

22 343.50 (4m) (b) In addition to the inquiry under par. (a), if the applicant is at
23 least ~~18~~ 15 and one-half years of age, the department shall orally state to the
24 applicant that he or she has the opportunity to indicate his or her willingness to be
25 an organ donor. If the applicant indicates that he or she is undecided in response to

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1 the inquiry under par. (a), the department shall provide the applicant with written
2 information that all organ procurement organizations and the department have
3 together developed. If the applicant makes an affirmative response to the inquiry
4 under par. (a), the department shall request at that time that the applicant write on
5 the identification card the information that is required to make an anatomical gift
6 under s. 157.06 ~~(2) (b) and (c) (5)~~ and affix a sticker thereto as provided in s. 343.175
7 (3).

8 **SECTION 20.** 343.50 (8) (b) of the statutes is amended to read:

9 343.50 **(8)** (b) The department may not disclose any record or other information
10 concerning or relating to an applicant or identification card holder to any person
11 other than a court, district attorney, county corporation counsel, city, village or town
12 attorney, law enforcement agency, a procurement organization as provided in sub.
13 (4m) (a), the applicant or identification card holder or, if the applicant or
14 identification card holder is under 18 years of age, his or her parent or guardian.
15 Except for photographs disclosed to a law enforcement agency under s. 343.237,
16 persons entitled to receive any record or other information under this paragraph
17 shall not disclose the record or other information to other persons or agencies. This
18 paragraph does not prohibit the disclosure of a person's name or address, of the name
19 or address of a person's employer or of financial information that relates to a person
20 when requested under s. 49.22 (2m) by the department of workforce development or
21 a county child support agency under s. 59.53 (5).

22 **SECTION 21. Initial applicability.**

23 (1) This act first applies to any of the following that occur on the effective date
24 of this subsection:

25 (a) A request that another make an anatomical gift.

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- 1 (b) The making, amendment, or revocation of an anatomical gift.
- 2 (c) The refusal to make an anatomical gift.
- 3 (d) The distribution of a body or part that is the subject of an anatomical gift.
- 4 (e) The issuance of a driver's license or identification card.

5 (END)