



State of Wisconsin
1997 - 1998 LEGISLATURE
April 1998 Special Session

LRB-5232/2
DAK:jlg:ch

ASSEMBLY BILL 2

May 12, 1998 - Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION, by request of Governor Tommy G. Thompson. Referred to Committee on Health.

1 **AN ACT** *to repeal* 157.06 (1) (i); *to renumber and amend* 157.06 (4) (a), 157.06
2 (5) (b), 157.06 (5) (e) and 157.06 (9); *to amend* 157.06 (4) (title), 157.06 (5) (title),
3 157.06 (5) (f) 1., 157.06 (5) (f) 2., 157.06 (6) (a) 1., 157.06 (7) (b) and 157.06 (9)
4 (title); and *to create* 157.06 (1) (fm) and (L), 157.06 (4) (ag) and 157.06 (9) (b),
5 (c) and (d) of the statutes; **relating to:** changing requirements for hospitals,
6 organ procurement organizations, coroners and medical examiners with
7 respect to the potential donation of anatomical gifts and procurement and use
8 of body parts by an organ procurement organization.

Analysis by the Legislative Reference Bureau

Current state law requires hospitals, after consulting with organ procurement organizations, to establish agreements or affiliations for coordination of procurement and use of human bodies and parts. (This state has 2 organ procurement organizations, whose areas of service are designated by the federal department of health and human services, and that, between the 2, serve the entire state, except for 2 counties. One organ procurement organization is located in the city of Madison and the other in the city of Milwaukee.) Under final regulations of the federal department of health and human services published in the *Federal Register* and effective July 1, 1998, human organ allocation among organ transplant

candidates must be made nationally in order of decreasing medical urgency status, with waiting time in that status to be used to break ties within status groups, and neither place of residence nor place of listing on a wait list may be a major determinant of access to a transplant. The final regulations prohibit a state from establishing or continuing in effect any law or rule that would restrict the ability of any transplant hospital, organ procurement organization or other party to comply with organ allocation policies under the regulations.

This bill requires that a human vascularized organ (as defined in the bill) that is obtained by an organ procurement organization for which the designated service area primarily includes area in this state be used in that service area unless no suitable potential recipient for the vascularized organ is specified on a waiting list of a hospital in that designated service area. In that case, the organ procurement organization must offer the organ for use by any other organ procurement organization for which the designated service area primarily includes area in this state. If that organ procurement organization is unable to use the vascularized organ, the original organ procurement organization must offer the organ to one of the following: 1) an organ procurement organization for which the designated service area primarily is outside the state if, after making specified findings, it has entered into a reciprocal sharing agreement with that organ procurement organization; or 2) an entity that distributes vascularized organs on a regional or national basis under a contract with the federal department of health and human services.

Under current law, if the medical record of a patient who dies in a hospital does not indicate whether the patient has made or refused to make an anatomical gift (a donation of a part of the patient's body), a representative of the hospital must discuss with members of the patient's family the option of making or refusing to make such a gift and must request that the family make a gift of all or a part of the decedent's body. A coroner or medical examiner may release custody of the body of a decedent and permit the removal of a part from the body if, among other things, a hospital, physician or procurement organization has so requested, the coroner or medical examiner has notified the family members of the option to make or refuse to make an anatomical gift and the coroner or medical examiner knows of no refusal by the decedent or objection by the family. A law enforcement officer, fire fighter, emergency medical technician — paramedic, ambulance service provider or emergency medical technician — basic who finds a person who is near death or believed to be dead must make reasonable search for a document of gift or other information identifying the person as a donor or as having revoked or refused to make an anatomical gift and, if found, must notify and send to the hospital the document or information. A hospital also must make such a search for persons who are near death or believed to be dead and are admitted to the hospital.

This bill changes laws relating to requirements for hospitals, organ procurement organizations (as defined in the bill), coroners and medical examiners with respect to potential anatomical gifts. The bill requires a hospital, as an alternative to contacting a relative of a potential donor directly, to contact by telephone an organ procurement organization at or near the time of the death of a patient for whom there is no record of having made, revoked or refused to make an

anatomical gift. If the hospital contacts the organ procurement organization, the hospital must provide the organization with the patient's identifier number, age, actual or potential cause of death and, if available, medical history. From this information and in consultation with the attending physician, the organ procurement organization must determine if an anatomical gift is medically suitable for donation. If such a gift is determined to be suitable, an organ procurement organization representative or a requester designated by the organ procurement organization shall discuss with family members the option of making or refusing to make a gift.

Lastly, the bill requires a coroner or medical examiner who has custody of the body of a decedent and has no evidence that the decedent has made or refused to make an anatomical gift to contact by telephone the organ procurement organization for the region and provide the decedent's age, cause of death and, if available, medical history. The organ procurement organization then may, under current law, request release of custody of the body for purposes of obtaining an anatomical gift.

For further information see the *state and local* 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.** 157.06 (1) (fm) and (L) of the statutes are created to read:

2 157.06 (1) (fm) "Organ procurement organization" means an organization that
3 meets the requirements specified for a qualified organ procurement organization
4 under 42 USC 273.

5 (L) "Vascularized organ" means a heart, lung, liver, pancreas, kidney, intestine
6 or other organ that requires the continuous circulation of blood to remain useful for
7 purposes of transplantation.

8 **SECTION 2.** 157.06 (1) (i) of the statutes is repealed.

9 **SECTION 3.** 157.06 (4) (title) of the statutes is amended to read:

10 157.06 (4) (title) ~~AUTHORIZATION~~ NOTIFICATION AND AUTHORIZATION BY CORONER
11 OR MEDICAL EXAMINER.

1 **SECTION 4.** 157.06 (4) (a) of the statutes, as affected by 1997 Wisconsin Act 52,
2 is renumbered 157.06 (4) (am), and 157.06 (4) (am) 1., as renumbered, is amended
3 to read:

4 157.06 (4) (am) 1. The official has received a request for the part of the body
5 from a hospital, physician or organ procurement organization.

6 **SECTION 5.** 157.06 (4) (ag) of the statutes is created to read:

7 157.06 (4) (ag) If a decedent is within the custody of a coroner or medical
8 examiner and if there is no evidence that the decedent has made or refused to make
9 an anatomical gift, the coroner or medical examiner shall contact by telephone the
10 organ procurement organization designated for the region in which the death occurs.
11 The coroner or medical examiner shall provide the organ procurement organization
12 with information, if known to the coroner or medical examiner, concerning the
13 decedent's age, the cause of the decedent's death and, if available, the decedent's
14 medical history.

15 **SECTION 6.** 157.06 (5) (title) of the statutes is amended to read:

16 157.06 (5) (title) POLICIES; ORGAN PROCUREMENT ORGANIZATION NOTIFICATION;
17 REQUIRED REQUEST; SEARCH AND NOTIFICATION.

18 **SECTION 7.** 157.06 (5) (b) of the statutes is renumbered 157.06 (5) (b) 1. and
19 amended to read:

20 157.06 (5) (b) 1. If at or near the time of death of a patient there is no medical
21 record or evidence obtained under par. (c) that the patient has made, revoked or
22 refused to make an anatomical gift, the hospital administrator or a representative
23 designated by the administrator shall discuss with an available individual, under
24 the priority established in sub. (3) (a), the option to make or refuse to make an
25 anatomical gift and request that the individual make an anatomical gift of all or a

1 part of the decedent's body. Alternatively, the administrator shall contact by
2 telephone the organ procurement organization designated for the region of which the
3 hospital is a part. If the administrator or representative contacts the organ
4 procurement organization, he or she shall provide the organ procurement
5 organization with the identifier number of the patient, the patient's age, the actual
6 or potential cause of the patient's death and, if available, the patient's medical
7 history.

8 2. If the organ procurement organization is contacted under subd. 1., the organ
9 procurement organization shall, in consultation with the attending physician of the
10 patient under subd. 1., determine if an anatomical gift is suitable, based upon
11 accepted medical standards, for a purpose specified in sub. (6) (a). If the organ
12 procurement organization and the patient's attending physician determine that an
13 anatomical gift is not so suitable, hospital personnel shall make a notation to this
14 effect in the patient's medical record. If the organ procurement organization and the
15 patient's attending physician determine that an anatomical gift is so suitable, an
16 organ procurement organization representative or a requester designated by the
17 organ procurement organization shall discuss with an available individual, under
18 the priority established in sub. (3) (a), the option to make or refuse to make an
19 anatomical gift and request that the individual make an anatomical gift of all or a
20 part of the decedent's body.

21 3. The hospital administrator or representative or the organ procurement
22 organization representative or designated requester shall make the request with
23 reasonable discretion and sensitivity to the circumstances of the family. A request
24 need not be made if the gift is not suitable, based upon accepted medical standards,
25 for a purpose specified in sub. (6) (a) or if the requester knows that the patient, or the

1 member of the class of individuals to whom the request would be directed under sub.
2 (3) (a), has a cultural or religious objection or any other objection to the making of
3 an anatomical gift. An entry shall be made in the medical record of the patient, in
4 accordance with the rules promulgated under par. (f), stating the name and
5 affiliation of the individual making the request and the name, response and
6 relationship to the patient of the individual to whom the request was made.

7 **SECTION 8.** 157.06 (5) (e) of the statutes is renumbered 157.06 (5) (bm) and
8 amended to read:

9 157.06 (5) (bm) If at or near the time of death of a patient a hospital knows that
10 an anatomical gift of all or a part of the patient's body has been made under sub. (3)
11 (a), that a release and removal of a part of the patient's body has been permitted
12 under sub. (4) or that a patient or an individual identified as in transit to the hospital
13 is a donor, the hospital shall notify the donee if one is named and known to the
14 hospital. If a donee is neither named nor known to the hospital, the hospital shall
15 notify an appropriate the organ procurement organization. The hospital shall
16 cooperate in the implementation of the anatomical gift or release and removal of a
17 part of the body of the patient or individual.

18 **SECTION 9.** 157.06 (5) (f) 1. of the statutes is amended to read:

19 157.06 (5) (f) 1. Set forth policies and procedures to be followed for discussing
20 the anatomical gift donation process with members of the patient's family in
21 situations under par. (b) 2. and 3. in which there is or is not a document of gift.

22 **SECTION 10.** 157.06 (5) (f) 2. of the statutes is amended to read:

23 157.06 (5) (f) 2. Prescribe the manner in which information obtained under par.
24 (b) 2. and 3. regarding anatomical gift donations, ~~objections~~ revocations and refusals

1 shall be placed in the patient's medical record so that it is readily accessible to
2 hospital and other medical personnel in the event of the death of the patient.

3 **SECTION 11.** 157.06 (6) (a) 1. of the statutes is amended to read:

4 157.06 (6) (a) 1. A hospital, physician or organ procurement organization, for
5 transplantation, therapy, medical or dental education, research, or advancement of
6 medical or dental science.

7 **SECTION 12.** 157.06 (7) (b) of the statutes is amended to read:

8 157.06 (7) (b) If an anatomical gift is made to a designated donee, the document
9 of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures
10 after the donor's death. The document of gift, or a copy, may be deposited in any
11 hospital, organ procurement organization or registry office that accepts it for
12 safekeeping or for facilitation of procedures after death. On request of an interested
13 person, upon or after the donor's death, the person in possession shall allow the
14 interested person to examine or copy the document of gift.

15 **SECTION 13.** 157.06 (9) (title) of the statutes is amended to read:

16 157.06 (9) (title) ~~COORDINATION OF PROCUREMENT~~ PROCUREMENT AND USE.

17 **SECTION 14.** 157.06 (9) of the statutes is renumbered 157.06 (9) (a) and
18 amended to read:

19 157.06 (9) (a) Each hospital in this state, after consultation with other
20 hospitals and with the organ procurement ~~organizations~~ organization in whose
21 designated service area the hospital is located, shall establish agreements or
22 affiliations for coordination of procurement and use of human bodies and parts of
23 ~~human bodies.~~

24 **SECTION 15.** 157.06 (9) (b), (c) and (d) of the statutes are created to read:

1 157.06 (9) (b) A vascularized organ that is obtained by an organ procurement
2 organization for which the designated service area primarily includes area in this
3 state shall be used within that designated service area unless par. (c) applies.

4 (c) If no suitable potential recipient for the vascularized organ is specified on
5 a waiting list of a hospital that is within the designated service area of the organ
6 procurement organization specified in par. (b), that organ procurement organization
7 shall offer the vascularized organ for use by any other organ procurement
8 organization for which the designated service area primarily includes area in this
9 state.

10 (d) If no suitable potential recipient for the vascularized organ is specified on
11 a waiting list of a hospital that is within the designated service area of the organ
12 procurement organization to which the vascularized organ is offered under par. (c),
13 the organ procurement organization specified in par. (b) shall do one of the following:

14 1. If the organ procurement organization has found that it is in the best
15 interests of persons on waiting lists in this state in need of transplanted vascularized
16 organs and will increase the number of people receiving transplants to enter into a
17 reciprocal sharing agreement with an organ procurement organization for which the
18 designated service area primarily is outside this state, and has entered into such an
19 agreement, offer the vascularized organ for use by the organ procurement
20 organization under the agreement.

21 2. Offer the vascularized organ for use by an entity that distributes
22 vascularized organs on a regional or national basis under a contract with the federal
23 department of health and human services or a subcontract with a contractor with the
24 federal department of health and human services.

25 **SECTION 16. Effective date.**

