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Today through editing

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reger

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

This is a preliminary draft. An analysis will be provided in a later version.

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.

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

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

1 71.05 (10) (i) 1. Subject to the conditions in this paragraph, an individual may
 2 subtract up to \$10,000 from federal adjusted gross income if he or she, or his or her
 3 dependent who is claimed under section 151 (c) of the Internal Revenue Code, while
 4 living, donates ~~one or more of his or her human organs~~ all or part of his or her liver,
 5 pancreas, kidney, intestine, lung, or bone marrow to another human being for human
 6 organ transplantation, as defined in s. 146.345 (1), ~~except that in this paragraph,~~
 7 ~~“human organ” means all or part of a liver, pancreas, kidney, intestine, lung, or bone~~
 8 ~~marrow~~ (b). A subtract modification that is claimed under this paragraph may be
 9 claimed in the taxable year in which the ~~human organ~~ transplantation occurs.

****NOTE: Do you want to give “tissue” in s. 146.31 the the same meaning it has in
 s. 157.06? Section 146.31 concerns blood banks and immunity for involvement in
 transplantations.

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

12 **146.345 (title) Sale of human organs parts prohibited.**

13 (1) (a) “Human organ” means a human kidney, liver, heart, lung, pancreas,
 14 bone marrow, cornea, eye, bone or skin or any other human organ specified by the
 15 department by rule. “Human organ” part has the meaning given for “part” in s.
 16 157.06 (1) (n), except that “human part” does not mean human whole blood, blood
 17 plasma, a blood product or a blood derivative or human semen.

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

21 (c) “Valuable consideration” does not include reasonable payment associated
 22 with the removal, transportation, implantation, processing, preservation, quality
 23 control ~~or~~ storage or disposal of a human organ part or an expense of travel, housing

1 or lost wages incurred by a human ~~organ part~~ donor in connection with donation of
2 the human ~~organ part~~.

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

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

6 146.82 (2) (a) 19. To ~~an organ~~ a procurement organization by a hospital (2)
7 pursuant to s. 157.06 (5) (b) 1, as defined in s. 157.06 (1) (p), for the purpose of
8 conducting an examination to ensure the medical suitability of a body part that is or
9 could be the subject of an anatomical gift under s. 157.06.

10 SECTION 4. 155.20 (8) of the statutes is amended to read:

11 ~~155.20 (8) A health care agent may make an anatomical gift as authorized
12 under s. 157.06 (3) (a) 7. (8) (a) 1. of all or a part of the principal's body after the
13 principal's death unless the principal made an unrevoked refusal to make that
14 anatomical gift.~~

****NOTE: Should a principal be able to exclude a health care agent from making
an anatomical gift of the principal's body or part by means other than making a refusal
to make an anatomical gift. For example, might not a person designate one person as a
general health care agent, but give a different agent authority to make decisions
regarding anatomical gifts. This seems to be what is contemplated under UAGA section
4 (2).

15 SECTION 5. 155.30 (1) (form) of the statutes is amended to read:

16 155.30 (1) (form)

17 "NOTICE TO PERSON

18 MAKING THIS DOCUMENT

19 YOU HAVE THE RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH
20 CARE. NO HEALTH CARE MAY BE GIVEN TO YOU OVER YOUR OBJECTION,
21 AND NECESSARY HEALTH CARE MAY NOT BE STOPPED OR WITHHELD IF
22 YOU OBJECT.

JWS
3-10

1 BECAUSE YOUR HEALTH CARE PROVIDERS IN SOME CASES MAY NOT
2 HAVE HAD THE OPPORTUNITY TO ESTABLISH A LONG-TERM
3 RELATIONSHIP WITH YOU, THEY ARE OFTEN UNFAMILIAR WITH YOUR
4 BELIEFS AND VALUES AND THE DETAILS OF YOUR FAMILY
5 RELATIONSHIPS. THIS POSES A PROBLEM IF YOU BECOME PHYSICALLY
6 OR MENTALLY UNABLE TO MAKE DECISIONS ABOUT YOUR HEALTH CARE.

7 IN ORDER TO AVOID THIS PROBLEM, YOU MAY SIGN THIS LEGAL
8 DOCUMENT TO SPECIFY THE PERSON WHOM YOU WANT TO MAKE
9 HEALTH CARE DECISIONS FOR YOU IF YOU ARE UNABLE TO MAKE THOSE
10 DECISIONS PERSONALLY. THAT PERSON IS KNOWN AS YOUR HEALTH
11 CARE AGENT. YOU SHOULD TAKE SOME TIME TO DISCUSS YOUR
12 THOUGHTS AND BELIEFS ABOUT MEDICAL TREATMENT WITH THE
13 PERSON OR PERSONS WHOM YOU HAVE SPECIFIED. YOU MAY STATE IN
14 THIS DOCUMENT ANY TYPES OF HEALTH CARE THAT YOU DO OR DO NOT
15 DESIRE, AND YOU MAY LIMIT THE AUTHORITY OF YOUR HEALTH CARE
16 AGENT. IF YOUR HEALTH CARE AGENT IS UNAWARE OF YOUR DESIRES
17 WITH RESPECT TO A PARTICULAR HEALTH CARE DECISION, HE OR SHE IS
18 REQUIRED TO DETERMINE WHAT WOULD BE IN YOUR BEST INTERESTS IN
19 MAKING THE DECISION.

20 THIS IS AN IMPORTANT LEGAL DOCUMENT. IT GIVES YOUR AGENT
21 BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. IT
22 REVOKES ANY PRIOR POWER OF ATTORNEY FOR HEALTH CARE THAT YOU
23 MAY HAVE MADE. IF YOU WISH TO CHANGE YOUR POWER OF ATTORNEY
24 FOR HEALTH CARE, YOU MAY REVOKE THIS DOCUMENT AT ANY TIME BY
25 DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN

1 YOUR PRESENCE, BY SIGNING A WRITTEN AND DATED STATEMENT OR BY
 2 STATING THAT IT IS REVOKED IN THE PRESENCE OF TWO WITNESSES. IF
 3 YOU REVOKE, YOU SHOULD NOTIFY YOUR AGENT, YOUR HEALTH CARE
 4 PROVIDERS AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY.
 5 IF YOUR AGENT IS YOUR SPOUSE AND YOUR MARRIAGE IS ANNULLED OR
 6 YOU ARE DIVORCED AFTER SIGNING THIS DOCUMENT, THE DOCUMENT
 7 IS INVALID.

8 YOU MAY ALSO USE THIS DOCUMENT TO MAKE OR REFUSE TO MAKE
 9 AN ANATOMICAL GIFT UPON YOUR DEATH. IF YOU USE THIS DOCUMENT
 10 TO MAKE OR REFUSE TO MAKE AN ANATOMICAL GIFT, THIS DOCUMENT
 11 REVOKES ANY PRIOR DOCUMENT RECORD OF GIFT THAT YOU MAY HAVE
 12 MADE. YOU MAY REVOKE OR CHANGE ANY ANATOMICAL GIFT THAT YOU
 13 MAKE BY THIS DOCUMENT BY CROSSING OUT THE ANATOMICAL GIFTS
 14 PROVISION IN THIS DOCUMENT.

15 DO NOT SIGN THIS DOCUMENT UNLESS YOU CLEARLY UNDERSTAND
 16 IT.

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

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

****NOTE: Do you want to call this section “Anatomical gifts” or “Revised uniform Anatomical Gift Act”?

20 **157.06 Anatomical gifts.** (1) DEFINITIONS. In this section:

****NOTE: Adult is not defined here because it is defined in s. 990.01 (3).

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

****NOTE: I modified the first clause of this definition to cross-reference the definition of health care agent under ch. 155. In the second clause, rather than referring to an individual who is authorized to make an anatomical gift on the principal's behalf, I refer to an individual who is authorized to make an anatomical gift of the principal's body or part. I did this to clarify that an agent may only assume the principal's authority to make gifts with respect to the principal's body or part, and not, for example, the principal's authority to make a gift of his or her child's body or parts.

1 (b) "Anatomical gift" means a donation of all or part of a human body to take
 2 effect after the donor's death for the purpose of transplantation, therapy, research,
 3 or education.

****NOTE: The UAGA definition of "anatomical gift" removes from the current law definition the specification of what constitutes death ("as determined in accordance with s. 146.71") — is this ok?

4 (c) "Decedent" means a deceased individual and includes a stillborn infant or
 5 a fetus.

****NOTE: I deleted the phrase "whose body or part is or may be the source of an anatomical gift" from the definition of "decedent." All of the references to "decedent" in the bill make sense without this phrase, and the reference to "decedent" in UAGA section 11 (j) [this bill sub. (10) (h)] makes more sense without the phrase. Section 11 (j) refers to a decedent who has made an unrevoked refusal — if a person has made an unrevoked refusal, he is not an individual whose body or part may be the source of an anatomical gift.

****NOTE: The UAGA comment to the definition of "decedent" includes a discussion on whether to include stillborn infants and fetuses in the definition of "decedent." If you do include fetuses, do you want to specify to which fetuses this definition applies — i.e., does a fetus have to be dead to be a "decedent"? I left out the qualification that "decedent" includes a fetus "subject to restrictions imposed by law other than this act," because the qualification is vague. Should the definition refer to specific restrictions?

6 (d) "Disinterested witness" means a witness who is not any of the following:
 7 1. The spouse, child, parent, sibling, grandchild, grandparent, or guardian of
 8 the individual who makes, amends, revokes, or refuses to make an anatomical gift.
 9 2. A person who exhibits special care and concern for the individual who makes,
 10 amends, revokes, or refuses to make an anatomical gift.
 11 3. Any other person to whom the anatomical gift could pass under sub. (10).

****NOTE: Please review my changes to the definition of "disinterested witness." I assume the definition is supposed to exclude rather than include a person who exhibited special care and concern.

****NOTE: This bill uses the term "record of gift" in place of "document of gift."

✓
 except as a compensated health care provider,

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

3 (f) “Donor registry” means a database that contains records of anatomical gifts
4 and amendments to or revocations of anatomical gifts.

5 (g) “Driver’s license” means a license or permit to operate a vehicle, whether
6 or not conditions are attached to the license or permit, that is issued by the
7 department of transportation under ch. 343.

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

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

****NOTE: Should “guardian” cover a guardian of the estate?

14 (j) “Hospital” means a facility approved as a hospital under s. 50.35 or a facility
15 operated as a hospital by the federal government, a state, or a political subdivision
16 of a state.

****NOTE: The bill defines a hospital as a facility “approved” rather than “licensed”
under s. 50.35 so it better matches the language in s. 50.35. The current law definition
in s. 157.06 (1) (f) uses the term “approved.”

17 (k) “Identification card” means an identification card issued by the department
18 of transportation under s. 343.50.

****NOTE: Rather than defining “know” as having actual knowledge, I required
actual knowledge in each instance that the term “know” is used.

****NOTE: “Minor” is not defined here, because it is defined in s. 990.01 (20).

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

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

****NOTE: The UAGA definition of parent provides little clarification. This bill uses the definition of parent from the children's code, which is in accordance with the UAGA comment, and includes the specification from UAGA that a parent does not include a person whose parental rights have been terminated. Would you rather leave the definition vague?

5 (n) "Part" means an organ, eye, or tissue of a human being. "Part" does not
6 mean a whole human body.

****NOTE: "Person" is not defined here because it is defined in s. 990.01 (26).

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

9 (p) "Procurement organization" means an eye bank, organ procurement
10 organization, or tissue bank.

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

16 (r) "Reasonably available" means able to be contacted by a procurement
17 organization without undue effort and willing and able to act in a timely manner
18 consistent with existing medical criteria necessary for the making of an anatomical
19 gift.

****NOTE: I did not define "recipient" because it is only used twice. Instead I incorporated the substance of the definition where UAGA uses the term.

1 (s) "Record" means information that is inscribed on a tangible medium or that
2 is stored in an electronic or other medium and is retrievable in a perceivable form.

3 (t) "Record of gift" means a donor card or other record used to make an
4 anatomical gift, including a statement or symbol on a driver's license or
5 identification card or in a donor registry.

****NOTE: Please review the definition of "record of gift" which replaces "document
of gift."

6 (u) "Record of refusal" means a record created under sub. (6) that expressly
7 states an intent to bar other persons from making an anatomical gift of an
8 individual's body or part.

****NOTE: This bill makes the defined term "record of refusal" rather than "refusal,"
because UAGA sometimes uses the term "refusal" to refer to any type of refusal to make
an anatomical gift, including an oral refusal. Alternatively, the bill could define the term
"refusal" and delete record from the definition.

9 (v) "Sign" means to do any of the following with present intent to authenticate
10 or adopt a record:

- 11 1. Execute or adopt a signature or tangible symbol.
12 2. Attach to or logically associate with the record an electronic symbol, sound,
13 or process.

****NOTE: I added signature to subd. 1.

****NOTE: "State" is not defined here because it is defined in s. 990.01 (40).

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

****NOTE: This definition is rather vague. Can we be more specific?

17 (x) "Tissue" means a portion of the human body other than an organ or eye and
18 does not include blood unless the blood is donated for the purpose of research or
19 education.

****NOTE: Rather than providing that tissue (and hence the term "part") includes blood only in the context of donations for research or education, it would be clearer to exclude blood from the definition of "tissue" and to include specific reference to blood in those provisions of s. 157.06 that apply to blood.

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

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

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

****NOTE: UAGA does not use the term "vascularized organ." I retained the current law definition of "vascularized organ" because the term is used in sub. (21), which is current law s. 157.06 (4m).

10 (2m) (2) SIGNING FOR A PERSON WHO IS PHYSICALLY UNABLE. If an individual who is
 11 physically unable to sign a record under sub. (4) (a) 4. or (b) 1., (5) (a) 1., (b) 1., (c) 1.,
 12 or (d) 1., or (6) (a) 1. or (b) 1. directs another to sign the record on his or her behalf,
 13 the signature of the other individual authenticates the record as long as all of the
 14 following conditions are satisfied:

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

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

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

****NOTE: I created this subsection to avoid repeating multiple times the process for directing another to sign a record.

Handwritten annotations: "7 (9)" on the left margin; "2m" in a circle next to the subsection number; "4", "5", and "6" in circles with checkmarks next to the corresponding sub-sections in the text; "(5)" and "(6)" in circles with checkmarks on the right margin.

1 (4) (3) WHO MAY MAKE AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. Except as
2 provided in subs. (6) and (7), any of the following may during the life of a donor make
3 an anatomical gift of the donor's body or part in the manner provided in sub. (4):

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

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

9 (c) A parent of the donor, if the donor is an unemancipated minor.

10 (d) A guardian of the donor.

INS 11-10/ ✓

***NOTE: Sub. (3) does not specify the purpose of an anatomical gift as UAGA Section 4 does, because the purpose is included in the definition of "anatomical gift."

***NOTE: What happens if individuals under sub. (3) (b) to (d) make conflicting gifts, for example a guardian and an agent?

***NOTE: Participants in the meeting on March 14, 2007, requested that I amend UAGA so that any person who may make an anatomical gift pertaining to a decedent may also make a gift before the decedent's death. I assume that the motivation for this request is avoid having to wait until a person dies before a person under proposed s. 157.06 (8) may execute an anatomical gift relating to a decedent. The last paragraph in the comment to UAGA Section 10 explains that UAGA is silent on whether a gift relating to a decedent may be made when the subject of the gift is near death or only after death. The comment suggests that under UAGA, a person could make a gift [under 157.06 (9) in this bill] relating to a decedent before the subject of the gift dies. If you are not satisfied with the UAGA scheme, I suggest amending proposed s. 157.06 (9) to specify that a gift may be made before death. (Something to this effect, "A person who is authorized to make an anatomical gift under sub. (8) may do so when the subject of the anatomical gift is near death or after the subject has died by doing any of the following.") This solution is better than amending proposed s. 157.06 (3) to allow more people to make gifts before a donor's death, because it maintains the distinction between gifts made without any specific anticipation of death and those made with specific anticipation of death, and it avoid the necessity of specifying a priority for those who may make a gift under proposed sub. (3).

11 (5) (4) MANNER OF MAKING AN ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) A donor
12 under sub. (3) (a) may make an anatomical gift by doing any of the following:

(4) ✓

Affixing to, or

1. Authorizing a person to imprint on the donor's driver's license or identification card a statement or symbol that indicates that the donor has made an anatomical gift.

****NOTE: Do you want to state that a person may make a gift by "affixing" a symbol to a license or identification card to better cover gifts made by placing an organ donor sticker on the license or identification card? Do you want to provide that an individual may make a gift by imprinting or affixing a statement or symbol himself or herself, not just by authorizing another to do so?

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

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

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

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

(b) A person under sub. (3) (b) to (d) may make an anatomical gift of a donor's body or part during the donor's life by doing any of the following:

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

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

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

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

****NOTE: I reorganized this subsection so it doesn't mix the treatment of donors and others authorized to make an anatomical gift. Also, I added a clarification under par. (b) that this section applies only to gifts made during the donor's life, since statutory section titles are not binding.

4 (3) (6) (5) AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) Subject
5 to sub. (7), a donor may amend an anatomical gift of his her body or part by doing any
6 of the following:

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

9 2. Subsequently executing a record of gift that amends a previously executed
10 anatomical gift or a portion of a previously executed anatomical gift either expressly
11 or by inconsistency.

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

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

16 (8) (b) Subject to sub. (7), a donor may revoke an anatomical gift of his or her body
17 or part by doing any of the following:

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

20 2. Subsequently executing a record of gift that revokes a previously executed
21 anatomical gift or a portion of a previously executed anatomical gift either expressly
22 or by inconsistency.

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

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

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

(8) ✓
8 (c) Subject to sub. (7), a person who is authorized to make an anatomical gift
(4) ✓
9 under sub. (3) (b) to (d) may amend an anatomical gift of a donor's body or part before
10 the donor's death by doing any of the following:

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

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

(8) ✓
16 (d) Subject to sub. (7), a person who is authorized to make an anatomical gift
(4) ✓
17 under sub. (3) (b) to (d) may revoke an anatomical gift of a donor's body or part before
18 the donor's death by doing any of the following:

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

21 2. Subsequently executing a record of gift that revokes a previously executed
22 anatomical gift or a portion of a previously executed anatomical gift either expressly
23 or by inconsistency.

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

****NOTE: As under sub. (4), I separated the treatment of donors and others and also separated the treatment of amendment and revocation.

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

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

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

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

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

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

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

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

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

6 5. If the refusal to make an anatomical gift was made in a record of refusal,
7 destroying or canceling the record of refusal, or the portion of the record of refusal,
8 that evidenced the refusal to make an anatomical gift, with intent to revoke the
9 refusal to make an anatomical gift.

10 (c) Except as provided in sub. (7) (h), in the absence of an express, contrary
11 indication by an individual set forth in a refusal to make an anatomical gift under
12 this subsection, the individual's unrevoked refusal to make an anatomical gift under
13 this subsection of his or her body or part bars all other persons from making an
14 anatomical gift of the individual's body or part.

***NOTE: UAGA section 7 (c) provides that an individual who has made a refusal may amend or revoke the refusal. Refusal is defined as a record, so it does not include an oral refusal under UAGA section 7 (a) (3). Therefore an oral refusal cannot be amended under UAGA section 7 (c). I assume that the UAGA drafters did not intend to preclude amending or revoking an oral refusal. Again in UAGA section 7 (d), I assume the use of the term refusal is not meant to exclude a refusal that is made orally.

15 (8) (7) PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION. (a)
16 Except as provided in par. (g) and subject to par. (f), in the absence of an express,
17 contrary indication by the donor, a person other than the donor may not make,
18 amend, or revoke an anatomical gift of the donor's body or part if the donor has made
19 an anatomical gift of his or her body or part under sub. (4) (a) or an amendment to
20 an anatomical gift under sub. (5) (a).

***NOTE: Should the 2nd to last line in paragraph (a) specify "that" part? Also, should that line refer to an "unrevoked" anatomical gift?

unrevoked

that

of the donor's body or that part

1 (b) A donor's revocation of an anatomical gift of the donor's body or part under
 2 sub. (5) (b) is not a refusal to make an anatomical gift and does not bar another person
 3 authorized to make an anatomical gift under sub. (3) from making an anatomical gift
 4 of the donor's body or part under sub. (4) and does not bar a person who is authorized
 5 to make an anatomical gift under sub. (8) from making an anatomical gift under sub.

7 (c) If a person other than the donor makes an unrevoked anatomical gift of the
 8 donor's body or part under sub. (4) (b) or an amendment to an anatomical gift of the
 9 donor's body or part under sub. (5) (c), another person may not amend or revoke the
 10 anatomical gift under sub. (9) or otherwise make an anatomical gift of the body or
 11 part under sub. (9).

12 (d) If a person other than the donor revokes an anatomical gift of the donor's
 13 body or part under sub. (5) (d), the revocation does not bar another person from
 14 making an anatomical gift of the donor's body or part under sub. (4) or (9).

15 (e) An anatomical gift of a part of a donor's body that is made under sub. (4) or
 16 in an amendment under sub. (5) ~~absent~~ ^{plain comma} an express, contrary indication by the donor
 17 or other person who made the anatomical gift, is not a refusal by the donor to make
 18 an anatomical gift of another part of the donor's body or a limitation on a later
 19 anatomical gift of another part of the donor's body.

****NOTE: Paragraphs (e) and (f) provide that a gift of a part that is made before the donor's death does not limit expansion of the gift after death. Should the bill also provide that a gift made after death does not limit later expansion of the gift by another, or would these provisions not be relevant to gifts made after death?

20 (f) An anatomical gift of a part that is made under sub. (4) or in an amendment
 21 under sub. (5) for a specified purpose for which an anatomical gift may be made,
 22 absent an express, contrary indication by the person who made the anatomical gift,

(5), (6) ✓

1 does not limit a person from making an anatomical gift of the part under sub. (4), (5),
2 or (9) for any of the other purposes for which an anatomical gift may be made.

****NOTE: I don't think this clearly accomplishes what is described in the comment to UAGA section 8 (f). The comment states that if a person makes a gift for one purpose, that person or another may expand the gift to include another purpose. This language appears to allow a person to substitute, not just expand, the purpose of the gift. Also, this bill allows a person to change/expand the purpose of the gift in an amendment under sub. (5), not just in a new gift made under sub. (4) or (9) — is this ok?

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

6 (h) If an unemancipated minor who has made a refusal to make an anatomical
7 gift under sub. (6) dies, a reasonably available parent of the minor may revoke the
8 minor's refusal to make an anatomical gift.

****NOTE: I assumed that a parent should be able to revoke any kind of refusal, including an oral refusal by a minor suffering a terminal illness, not just a refusal made in a record that is signed by the minor.

9 (a) (8) WHO MAY MAKE AN ANATOMICAL GIFT OF DECEDENT'S BODY OR PART (a) Except
10 as provided in subs. (6) and (7) and subject to pars. (b) and (c), any member of the
11 following classes of persons, in the order of priority listed, who is reasonably
12 available may make an anatomical gift of a decedent's body or part in the manner
13 provided in sub. (9):

14 1. A person who was the decedent's agent at the time of the decedent's death
15 and who, immediately before the decedent's death, had authority under sub. (3) (b)
16 to make an anatomical gift of the decedent's body or part.

17 2. The spouse of the decedent.

18 3. The adult children of the decedent.

19 4. The parents of the decedent.

20 5. The adult siblings of the decedent.

individual ✓

NEAR or upon the donor's death -cs

INS 18-16 ✓

individual ✓

- 1 6. The adult grandchildren of the decedent.
- 2 7. The grandparents of the decedent.
- 3 8. Adults who exhibited special care and concern for the decedent.
- 4 9. Persons who were guardians of the decedent at the time of the decedent's
- 5 death.
- 6 10. Any other persons who have authority to dispose of the decedent's body.

except as a compensated health care provider ✓

individual near or

individual's

****NOTE: Who is covered under subd. 10? Is it just a superintendent of an institution under 157.02, or a coroner or medical examiner under s. 979.02? If so, do you want to specify these people?

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

an individual's

under whom

****NOTE: Please review my rewrite.

(c) A person may not make an anatomical gift of a decedent's body or part if, at the time of the decedent's death, a person who is a member of a class with higher priority under par. (a) is reasonably available.

****NOTE: Since "reasonably available" is defined, I deleted the phrase "to make or object to the making of an anatomical gift" after "reasonably available."

NEAR near or upon donor's death-as

(12) (9) MANNER OF MAKING, AMENDING, OR REVOKING AN ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (a) A person authorized under sub. (8) to make an anatomical gift of a decedent's body or part may do so by doing any of the following:
1. Signing a record of gift.

an individual's

(9) ✓

ENB 11-19

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

3 3. Subject to sub. (23) (c), making an oral communication of an anatomical gift
4 that is contemporaneously reduced to a record and that is signed by the individual
5 receiving the oral communication. (9) ✓

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

12 (c) 1. Subject to subd. 2., a member of a class of persons that has higher priority
13 to make an anatomical gift under sub. (8) than the person who made an anatomical
14 gift under par. (a) may revoke the anatomical gift in the manner provided in par. (d),
15 except that if more than one member of the class with higher priority is reasonably
16 available, the agreement of at least one-half of the reasonably available members
17 is required to revoke the anatomical gift.

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

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

****NOTE: I restructured this subsection.

(B) (11)

1 (10) PERSONS THAT MAY RECEIVE ANATOMICAL GIFTS; PURPOSE OF GIFTS. (a) An
2 anatomical gift may be made to any of the following persons named in the record of
3 gift:

****NOTE: What is the purpose of par. (a)? Is it to require that if a recipient is named in the record of gift, the gift must pass to the named recipient? Is it to provide that a gift may be made only to the persons listed? Is it to state who may receive a gift?

****NOTE: Should this subsection refer to persons specified in an "anatomical gift" rather than persons specified in a "record of gift?" As written it is not applicable to anatomical gifts made orally. (This question is applicable to pars. (a) (intro.), (c), (d), and (e).)

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

****NOTE: I assumed from the comment that the purpose of research or education is supposed to apply to all the recipients. Please let me know if this is not correct.

JNS 21-7 ✓

7 2. Subject to par. (b), an individual into whose body a part is intended to be
8 transplanted.

****NOTE: Rather than defining "recipient" this bill includes the substance of the definition in this subdivision. Also, since the introduction to this paragraph provides that the recipient is named in the record of gift, I deleted the redundant requirement in this subdivision that the person making the anatomical gift designate the recipient.

9 3. An eye bank or tissue bank.

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

****NOTE: I added subdivision 4. because in the March 14, 2007, meeting the group requested clarification that a person may make a gift to a specific OPO. Should an OPO still be included in subd. 1., i.e., does an OPO ever accept a gift for research or education?

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

JNS 21-15 →

1 (c) If an anatomical gift of one or more specific parts or all parts is made in a
 2 record of gift that does not name a person under (a) 1. to 4. as the person to whom
 3 the anatomical gift is made, but identifies the purpose of the anatomical gift, all of
 4 the following apply:

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

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

****NOTE: Why say the "appropriate procurement agency" instead of directing that the part pass as provided in par. (f)?

9 3. If more than one purpose of an anatomical gift is set forth in the record of
 10 gift, but the purposes are not set forth in any priority, the part shall be used for
 11 transplantation or therapy, if suitable, and if the part cannot be used for
 12 transplantation or therapy, may be used for research or education.

****NOTE: Subdivision 3. is UAGA section 11 (d). Please verify that UAGA section 11 (d), like par. (c), applies only to to gifts of specific parts, and not also to a gift of a body.

13 (d) If an anatomical gift of one or more specific parts is made in a record of gift
 14 that does not name a person under par. (a) 1. to 4. as the person to whom the
 15 anatomical gift is made and does not identify the purpose of the anatomical gift, the
 16 parts may be used only for transplantation or therapy, and the parts pass as provided
 17 in par. (f).

****NOTE: Par. (c) refers to a gift of "one or more specific parts or all parts" and par. (d) refers to a gift of "one or more specific parts." Should there be any distinction? Why not just refer to a gift "of a part"? In the statutes, use of the singular also covers plural.

18 (e) If a record of gift specifies only a general intent to make an anatomical gift
 19 by words such as "donor," "organ donor," or "body donor," or by a symbol or statement
 20 of similar meaning, the anatomical gift may be used only for the purpose of
 21 transplantation or therapy, and the parts pass as provided in par. (f).

an anatomical gift is for

an anatomical

may refer to a gift of a part or all parts

1.
****NOTE: I used "meaning" instead of "import."

- 1 (f) If pars. (b), (c) 1., (d), or (e) applies, all of the following apply:
- 2 1. If the part is an eye, the part passes to the appropriate eye bank.
- 3 2. If the part is tissue, the part passes to the appropriate tissue bank.
- 4 3. If the part is an organ, the part passes to to the appropriate organ
- 5 procurement organization as custodian of the organ.

****NOTE: Rather than stating in a separate paragraph that an OPO receives an organ only as custodian, this bill specifies custodian status in subd. 3.

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

****NOTE: Do you want to be more specific as to who is obligated to dispose of the body? You could provide that unless the superintendent of an institution where the deceased resided is required under s. 157.02 to dispose of the body, the coroner or medical examiner is responsible for disposing of the body, as under s. 979.09.

(5)/(6) or (10)

- 10 (h) A person may not accept an anatomical gift of a decedent's body or part if
- 11 the person has actual knowledge that the anatomical gift was not effectively made
- 12 under sub. (4) or (9) or if the person has actual knowledge that the decedent made
- 13 a refusal to make an anatomical gift under sub. (6) that was not revoked. For
- 14 purposes of this paragraph, if a person has actual knowledge that an anatomical gift
- 15 was made on a record of gift, the person is deemed to have actual knowledge of any
- 16 amendment or revocation of the anatomical gift or any refusal to make an anatomical
- 17 gift that is on the same record of gift.

(7)

as provided in

****NOTE: UAGA Section 11 (j) refers to a refusal, which is defined only as a refusal made in a record. I assume that the first sentence of this paragraph is intended to cover any type of refusal, including a refusal that is made orally.

****NOTE: "Know" is defined in UAGA as having actual knowledge. I substituted the definition each time the term "know" is used. Hence in the last sentence of this paragraph, a person is deemed to have actual knowledge, ok?

****NOTE: Rather than saying a gift was “not effectively made,” do you want to say the gift was not made as provided under sub. (4), (5), or (9)?

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

****NOTE: Throughout this subsection UAGA refers to a gift that is made in a “record of gift.” There is no requirement that a gift made orally under sub. (4) (a) 3. be reduced to a record. Do you want to require that all gifts be reduced to a record? Should this subsection just refer to “an anatomical gift” rather than “an anatomical gift that is made in a record of gift”?

3 **(B)** **(12)** **(11)** SEARCH AND NOTIFICATION. (a) If any of the following persons reasonably
4 believes an individual to be dead or near death, the person shall make a reasonable
5 search of the individual for a record of gift or a record of refusal or other information
6 identifying the individual as a donor or as an individual who has refused to make an
7 anatomical gift.

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

10 2. If no other source of information is immediately available, a hospital, as soon
11 as practical after the individual’s arrival at the hospital.

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

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

19 **(B)** **(13)** **(12)** DELIVERY OF RECORD OF GIFT NOT REQUIRED; RIGHT TO EXAMINE. (a) A record
20 of gift need not be delivered during the donor’s lifetime to be effective.

1 (b) Upon or after an individual's death, a person who has possession of a record
 2 of gift or a record of refusal relating to the individual's body or part shall allow any
 3 person who is authorized to make or object to the making of an anatomical gift of the
 4 individual's body or part, and any person to whom the body or part could pass under
 5 sub. (10), to examine and copy the record of gift or record of refusal.

****NOTE: Rather than referring to a "person who is authorized to make or object to the making of an anatomical gift," should this paragraph instead make a more specific reference to a person under sub. (8) (a)? If not, do you want to also provide that a person who is authorized to revoke a gift should be provided access to the record?

6 (13) RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS. (a) A
 7 procurement organization shall do all of the following when a hospital refers an
 8 individual who is near death or who is deceased to the procurement organization:

****NOTE: I reorganized this subsection to group all of the duties of a procurement organization in one paragraph. The requirement that the department of transportation provide POs access to information [UAGA Section 14 (b)] is in ch. 343.

****NOTE: Perhaps this paragraph should refer to a decedent rather than a deceased individual, particularly if it is important to incorporate the substance of the definition of decedent.

9 1. Make a reasonable search of the records of the department of transportation
 10 and of any donor registry, of whose existence it has actual knowledge, for the
 11 geographical area in which the individual resides or resided to ascertain whether the
 12 individual is a donor.

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

****NOTE: Is this supposed to require the PO to search for the person with highest priority or just any person who has any authority to make a gift?

16 3. If the individual referred is a minor who is a donor or who has signed a record
 17 of refusal and the minor dies, unless the procurement organization has actual
 18 knowledge that the minor was emancipated, conduct a reasonable search for the

made an unrevoked refusal to make an anatomical gift

(11)

(B)

(14)

number
9

revoke,

make

1 parents of the minor and provide the parents an opportunity to revoke or amend the
2 anatomical gift or record of refusal relating to the minor.

****NOTE: Why does this subdivision require a search for the parents only after the minor dies, and not when the minor is near death? Should this paragraph refer to all refusals, not just those made in a signed record?

3 4. If the procurement agency receives information about an anatomical gift of
4 the individual's body or part that under sub. (10) passes to a person other than the
5 procurement organization, promptly advise the other person of relevant information
6 regarding the anatomical gift.

****NOTE: The second sentence in UAGA Section 14 (g) is not clear. It states that if a PO receives information that an anatomical gift to any other person was made, the PO must advise that person. I interpret "a gift to any other person" as a gift that specifies who is to receive the gift. It is clear from the comment, that the intent is to make sure that a PO informs a person to whom a gift should pass under sub. 9 of the gift. Is my change ok?

7 (b) When a hospital refers an individual who is dead or near death to a
8 procurement organization, the procurement organization may conduct any
9 reasonable examination to ensure the medical suitability of a part that is or could be
10 the subject of an anatomical gift for transplantation, therapy, research, or education
11 from a donor or a prospective donor. Unless otherwise prohibited by law, an
12 examination under this paragraph may include an examination of all of the donor's
13 or prospective donor's [individual's] medical or dental records. During the
14 examination period, measures necessary to ensure the medical suitability of the part
15 may not be withdrawn unless the hospital or procurement organization has actual
16 knowledge that the individual expressed a contrary intent.

****NOTE: The first sentence of this paragraph [UAGA Section 14 (c)] starts with a reference to an "individual" and then uses the term "donor or prospective donor." This is confusing because a "prospective donor" is defined as a individual who is determined by a PO to have a medically suitable part and who has not refused to make a gift. Does this mean that the PO can conduct an examination only after determining that an individual is a donor or prospective donor? That doesn't make sense. Further the stated purpose of the examination is to "ensure" medical suitability, i.e. to make sure or guarantee that a part is suitable. Should the PO be "determining" rather than "ensuring" medical suitability? Is this how the first sentence should read: "When a hospital refers

determine whether a part of the individual

(11)

is medically suitable for

an individual at or near death to a procurement organization, the procurement organization may conduct a reasonable examination to determine whether a part of the individual that is or could be the subject of an anatomical gift is medically suitable for transplantation, therapy, research, or education.”

****NOTE: The bill moves the substance of UAGA Section 14 (d) into the paragraphs that authorize examinations.

determine

1 (c) Unless otherwise prohibited by law, at any time after a donor's death, the
2 person to whom the donor's body or part passes under sub. (10) may conduct any
3 reasonable examination, including an examination of all of the donor's medical or
4 dental records, to ensure the medical suitability of the donor's body or part for its
5 intended purpose.

****NOTE: Again, should "ensure" be "determine?" What is the "intended purpose of a body or part?" Does this refer to the function of the part, or is it the purpose of the anatomical gift?

6 (d) Subject to subs. (10) (g), (20) and (21), the rights of the person to whom an
7 anatomical gift of a part passes under sub. (10) are superior to the rights of all others
8 with respect to a part. The person may accept or reject an anatomical gift in whole
9 or in part. A person who accepts an anatomical gift of a part shall cause the part to
10 be removed from the donor's body after the death of the donor and before embalming,
11 burial, or cremation and without unnecessary mutilation.

****NOTE: Why is this paragraph made subject to sub. (10) (g)? Should the bill instead make an exception if the gift passes under sub. (10) (g)? This is UAGA section 14 (h), which is made subject to UAGA section 11 (i).

****NOTE: Is it intended that the first two sentences of UAGA Section 14 (h) only apply to parts and not bodies? Since the third sentence of (h) applies to gifts of bodies, and all the other sentences apply only to parts, I moved the third sentence to a different paragraph. The last sentence requires removal of a part "upon" the death of the donor -- I changed it to "after" the death, ok?

12 (e) Subject to the terms of a record of gift and this section, a person who accepts
13 an anatomical gift of an entire body may allow embalming, burial, cremation, or use
14 of the remains of the body in a funeral services.

****NOTE: Should "record of gift" be "anatomical gift in order to include gifts made orally?"

an anatomical

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

INS 28-3 ✓
4 (g) Only a physician or technician who is qualified to do so may remove a part
5 from the body of a donor.

***NOTE: I changed this [UGA Section 14 (j)] to be a qualification on which
physicians or technicians may remove parts, rather than a broad grant to remove parts.

6 (14) COORDINATION OF PROCUREMENT AND USE. Each hospital in this state shall
7 enter into agreements or affiliations with procurement organizations for
8 coordination of procurement and use of bodies and parts that are the subject of
9 anatomical gifts.

10 (B) (17) (15) PROHIBITED ACTS RELATED TO RECORDS. Any person who intentionally
11 falsifies, forges, conceals, defaces, or obliterates a record of gift, an amendment or
12 revocation of a record of gift, or a record of refusal for pecuniary gain is guilty of a
13 Class H felony, except that notwithstanding the maximum fine specified in s. 939.50
14 (3) (h), the person may be fined not more than \$50,000.

***NOTE: Should this also apply to falsification, etc. or amends to or revocations
of records of refusal?

***NOTE: Should the penalty apply to concealing or falsely reporting a gift,
amendment, revocation, or refusal that is made orally?

15 (B) (18) (16) IMMUNITY. (a) A person who acts, or in good faith attempts to act, in
16 accordance with this section or with the applicable anatomical gift law of another
17 state is not liable for the act in a civil action, criminal prosecution, or administrative
18 proceeding.

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

purporting to be an individual

(9) ✓ 1 (c) A person may rely on a representation made by an individual listed under
2 sub. (8) (a) 2., 3., 4., 5., 6., 7., or 8. as to the individual's relation to a donor or
3 prospective donor in determining whether an anatomical gift of the donor's or
4 prospective donor's body or part has been made, amended, or revoked.

***NOTE: Shouldn't this say that a person may rely on a representation made by an individual purporting to be an individual under sub. (8) (a)?

An anatomical gift

anatomical

(B) (19) (17) LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION OF RECORD OF GIFT;

PRESUMPTION OF VALIDITY. (a) A record of gift is valid if executed in accordance with any of the following:

- 1. This section.
- 2. The laws of the state or county where it was executed.
- 3. The laws of the state or county where the individual making the anatomical

gift was domiciled, had a place of residence, or was a national at the time the record of gift was executed.

(b) If a record of gift is valid under this subsection, the law of this state governs the interpretation of the record of gift.

(c) A person may presume that a record of gift or an amendment of a record of gift is valid unless the person has actual knowledge that it was not validly executed or was revoked.

***NOTE: Should this subsection also address gifts that are made orally?

(B) (20) (18) DONOR REGISTRY. The department of health and family services may establish a donor registry. If the department of health and family services establishes a donor registry under this subsection, the department of transportation shall cooperate with the department of health and family services in establishing the donor registry. The department of health and family services shall promulgate

making
CS
anatomical

made ✓

an anatomical

an anatomical ✓

made

1 administrative rules governing any donor registry established under this
2 paragraph.

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

****NOTE: In addition to addressing cases in which a prospective donor executed a
declaration or a power of attorney for health care, shouldn't this subsection also state a
general rule that measures necessary to ensure the medical suitability of an organ for
transplantation may not be withheld from a prospective donor. As written, such
measures are not required if the prospective donor did not execute a declaration or a
power of attorney.

9 ^(22m) ^e **(20)** AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; NO EVIDENCE OF
10 ANATOMICAL GIFT. (ag) If a decedent is within the custody of a coroner or medical
11 examiner and if there is no evidence that an anatomical gift of the decedent's body
12 or part has been made or that the decedent has refused to make an anatomical gift,
13 the coroner or medical examiner shall contact by telephone the organ procurement
14 organization designated for the region in which the death occurs. The coroner or
15 medical examiner shall provide the organ procurement organization with
16 information, if known to the coroner or medical examiner, concerning the decedent's
17 age, the cause of the decedent's death and, if available, the decedent's medical
18 history.

19 (am) The coroner or medical examiner may release and permit the removal of
20 a part from a decedent specified in par. (ag) within that official's custody, for
21 transplantation or therapy, including to a tissue bank under the requirements of sub.

22 ⁽²²⁾ ^e if all of the following apply: ✓

(24m) ✓

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

3 2. The official has made a reasonable effort, taking into account the useful life
4 of the part, to locate and examine the decedent's medical records and, subject to sub.
5 (23) inform persons listed in sub. (8) of their option to make, or object to making, an
6 anatomical gift.

7 3. The official does not have actual knowledge of a refusal to make an
8 anatomical gift or contrary indication by the decedent or of an objection by a person
9 having priority to act as listed in sub. (8) STET PERIOD

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

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

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

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

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

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

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

21 (23m) (21) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; POTENTIAL DONATIONS OF
22 ORGANS AND TISSUE. (a) Subject to par. (b), for a decedent who meets the criteria for
23 a determination of death under s. 146.71, who is a donor, and who is within the
24 jurisdiction of a coroner or medical examiner under ch. 979, any vascularized organ
25 that is the subject of an anatomical gift may be removed by a physician, within a time

1 period compatible with preservation of the organ for purposes of transplantation, if
2 all of the following take place:

****NOTE: Should reference to purposes of transplantation be for purposes of
transplantation or therapy? This also applies to par. (c).

or therapy

3 1. Immediately after the hospital in which the donor or potential donor is
4 located contacts the organ procurement organization designated for the region of
5 which the hospital is a part concerning the potential donation, the organ
6 procurement organization shall, by oral conversation, provide notice to the coroner
7 or medical examiner or his or her designee of the referral of the donor or potential
8 donor and shall provide notice of the referral to the district attorney or his or her
9 designee.

10 2. The coroner or medical examiner or his or her designee has the opportunity
11 to be present during the scheduled removal of the vascularized organ if, in the
12 judgment of the coroner, medical examiner, or designee, the organ may be necessary
13 in determining the cause of death.

14 (b) If, in the judgment of the coroner, medical examiner, or designee specified
15 in par. (a) the vascularized organ may be necessary in determining the cause of
16 death, the coroner, medical examiner, or designee may order a biopsy of the
17 vascularized organ or, if the coroner, medical examiner, or designee is present during
18 the scheduled removal, he or she may deny removal of the vascularized organ. If
19 denial of removal is a possibility, the organ procurement organization shall make a
20 good faith effort to consult with a forensic pathologist designated by the coroner,
21 medical examiner, or designee as to the pathologist's opinion concerning the
22 necessity of the vascularized organ in determining the cause of death. If the biopsy
23 is ordered or the removal is denied, the coroner, medical examiner, or designee shall

1 specify, in writing as part of any death report required under ch. 979, any reasons
2 for determining that the vascularized organ may be involved in the cause of death.

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

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

15 (e) 1. A physician who removes an organ from a decedent under this subsection
16 shall complete a form, as specified in sub. (24) (a). (26m) ✓

17 2. A physician, technician, or tissue bank employee who removes tissue, other
18 than cardiovascular tissue, from a decedent under this subsection shall complete a
19 form, as specified in sub. (24) (b). (26m) ✓

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

23 (21m) (22) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; TISSUE BANKS. (a) 1. If
24 a decedent is within the custody of a coroner or medical examiner, and the death
25 occurred in a hospital, any release of the decedent for potential donation of tissue

or therapy ✓

sub. (14m) (a) 2 ✓

1 shall be to the tissue bank with which the hospital has an agreement under ~~42 CFR~~
2 ~~482.45 (a) (2)~~ However, if such a tissue bank is unwilling to receive the tissue
3 donation, the tissue bank shall so notify the coroner or medical examiner.

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

8 3. Upon receipt of a notification under subd. 2., the tissue bank so notified, if
9 willing to receive the tissue donation, shall contact a reasonably available person,
10 under the priority established in sub. (8) to request that the person make an
11 anatomical gift of all or a part of the decedent's tissue.

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

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

20 1. Subject to subds. 2., 3., and 4., the coroner or medical examiner, after
21 considering a tissue bank's history, services, traditional referral patterns,
22 geographic service area, and tissue distribution record and any other criteria
23 required for consideration by the corporation counsel of the applicable county, enters
24 into a written, general referral agreement with one or more tissue banks to which

(9) number

(8) STET comma

1 the coroner or medical examiner shall refer decedents for potential donation of
2 tissue.

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

5 a. The corporation counsel of the applicable county.

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

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

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

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

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

21 (25m) (23) CONSENT FOR OR LIMITATION ON CERTAIN USES OF BONES OR TISSUE;
22 REQUIREMENTS. (a) A hospital, organ procurement organization, tissue bank, coroner,
23 or medical examiner that provides a record of gift to a person who may make an
24 anatomical gift under sub. (3) or (8) shall include in the record of gift the following
25 sentences: "I understand that donated bones or tissues, including skin, may have

(4) ✓ (9) ✓

1 numerous uses, including for reconstructive and cosmetic purposes, and that
2 multiple organizations, including nonprofit and for-profit organizations, may
3 recover, process, or distribute the donations. I further understand that I may, by this
4 record, limit the use of the bones or tissues, including skin, that are donated or types
5 of organizations that recover, process, or distribute the donation.”

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

8 1. A line or space for the person who may make an anatomical gift to sign to
9 acknowledge that he or she has read the sentences specified in par. (a) or that the
10 sentences have been read aloud to him or her. Except in cases in which an anatomical
11 gift is executed by means that do not require the person making the anatomical gift
12 to sign a record of gift, failure of the person making the anatomical gift to sign in the
13 line or space is a refusal to make or an objection to making an anatomical gift of bones
14 or tissues.

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

18 (c) If a person makes anatomical gift in the manner provided in sub. (9)(a) 2.
19 or 3., the individual receiving the oral communication shall read aloud to the person,
20 the sentences required under par. (a). If the anatomical gift is made in the manner
21 provided in sub. (9)(a) 3., the individual who reduces the anatomical gift to a record
22 shall note on the record that the person making the anatomical gift has been read
23 the sentences required under par. (a) and note any limitations that the person
24 making the anatomical gift imposes on the use of any bones or tissues that are the

1 subject of the anatomical gift or any limitations on the types of organizations that
2 recover, process, or distribute such bones or tissues.

****NOTE: Paragraph (c) is the material from current law s. 157.06 (3) (c) 2. c.

3 (d) If a person who may make an anatomical gift under sub. (3) or (8) makes
4 an anatomical gift under this subsection, the hospital, organ procurement
5 organization, tissue bank, coroner, or medical examiner that provides to the person
6 a record of gift under par. (a) shall also provide the person with the telephone number
7 and address of the agency or organization that recovers the anatomical gift.

8 (e) The requester under par. (a) shall provide the person who may make an
9 anatomical gift under sub. (3) or (8) with a copy of any record of gift executed under
10 the requirements of this subsection.

11 (24) FORMS FOR REMOVAL OF ORGANS AND CERTAIN TISSUES; RULES. The department
12 of health and family services shall promulgate rules prescribing all of the following:

- 13 (a) A form for removal of organs for use under sub. (21) (e) 1. and 3.
- 14 (b) A form for removal of tissue, other than cardiovascular tissue, for use under
15 sub. (21) (e) 2. and 3.

16 (25) PENALTY. Whoever fails to comply with the requirement to provide
17 sentences under sub. (23) (a) or (c) may be subject to a forfeiture of not less than \$500
18 nor more than \$1,000 for each violation.

19 (26) EFFECT OF PRIOR DOCUMENT OF GIFT. Notwithstanding the requirements of
20 this section, a document of gift that was made under the requirements of s. 157.06,
21 1987 stats., or s. 157.06, 2005 stats., is deemed to comply with the requirements of
22 this section.

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

(4) ✓ (9) ✓

(4) ✓

(26m) ✓

(23m) ✓

(27m) ✓

(25m) ✓

(28m) ✓

number (9) ✓

(23m)

1 230.35 (2d) (a) 2. "Human organ" has the meaning given for "vascularized
2 organ" in s. 157.06 (1) (L) means a heart, lung, liver, pancreas, kidney, intestine, or
3 other organ that requires the continuous circulation of blood to remain useful for
4 purposes of transplantation.

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

7 252.15 (2) (a) 1. Except as provided in subd. 1g., a health care provider who
8 procures, processes, distributes or uses a human body part or human tissue ~~donated~~
9 ~~as specified under s. 157.06 (6) (a) or (b)~~ that is the subject of an anatomical gift under
10 157.06 shall, without obtaining consent to the testing, test for the presence of HIV,
11 antigen or nonantigenic products of HIV or an antibody to HIV in order to assure
12 medical acceptability of the gift for the purpose intended. The health care provider
13 shall use as a test for the presence of HIV, antigen or nonantigenic products of HIV
14 or an antibody to HIV a test or series of tests that the state epidemiologist finds
15 medically significant and sufficiently reliable to detect the presence of HIV, antigen
16 or nonantigenic products of HIV or an antibody to HIV. If the validated test result
17 of the donor from the test or series of tests performed is positive, the human body part
18 or human tissue donated for use or proposed for donation may not be used.

19 (am) 1. A health care provider who procures, processes, distributes or uses
20 human sperm ~~donated as specified under s. 157.06 (6) (a) or (b)~~ that is the subject of
21 an anatomical gift under 157.06 ✓ shall, prior to the distribution or use and with
22 informed consent under the requirements of par. (b), test the proposed donor for the
23 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in
24 order to assure medical acceptability of the gift for the purpose intended. The health
25 care provider shall use as a test for the presence of HIV, antigen or nonantigenic

1 products of HIV or an antibody to HIV a test or series of tests that the state
2 epidemiologist finds medically significant and sufficiently reliable under s. 252.13
3 (1r) to detect the presence of HIV, antigen or nonantigenic products of HIV or an
4 antibody to HIV. The health care provider shall test the donor initially and, if the
5 initial test result is negative, shall perform a 2nd test on a date that is not less than
6 180 days from the date of the procurement of the sperm. No person may use the
7 donated sperm until the health care provider has obtained the results of the 2nd test.
8 If any validated test result of the donor for the presence of HIV, antigen or
9 nonantigenic products of HIV or an antibody to HIV is positive, the sperm donated
10 for use may not be used and, if donated, shall be destroyed.

****NOTE: Is it correct that a person may make an anatomical gift of sperm? If so,
isn't sperm covered under s. 252.15 (2) (a) 1.? (Same question for donation of ova.)

11 2. A health care provider who procures, processes, distributes or uses human
12 ova ~~donated as specified under s. 157.06 (6) (a) or (b)~~ that are the subject of an
13 anatomical gift under s. 157.06 shall, prior to the distribution or use and with
14 informed consent under the requirements of par. (b), test the proposed donor for the
15 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in
16 order to assure medical acceptability of the gift for the purpose intended.

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

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

22 343.17 (3) (b) The reverse side of the license shall contain an explanation of any
23 restriction codes or endorsement abbreviations used on the front of the license, in

g
 (2)
 plain
 (2)(b) and (e) (1)(t)
 plain
 (2)(i) (1)(u)

1 sufficient detail to identify the nature of the restrictions or endorsements to a law
 2 enforcement officer of this state or another jurisdiction. Except for a commercial
 3 driver license, a part of the reverse side of each license shall be printed to serve as
 4 a document record of gift under s. 157.06 ~~(2)(b) and (e) (1)(t)~~ or a document record
 5 of refusal ~~to make an anatomical gift~~ under s. 157.06 ~~(2)(i) (1)(u)~~.

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

7 343.175 (1) DEPARTMENT TO SOLICIT AND RECORD INFORMATION. As part of every
 8 application for an original, duplicate, reinstated, reissued or renewal license or
 9 endorsement, the department shall inquire whether the applicant desires to be an
 10 organ donor. The department shall record the organ donor response in its file of the
 11 person. If a procurement organization, as defined in s. 157.06 (1) (p), reasonably
 12 identifies a person and requests the information recorded in the person's file under
 13 this subsection, the department shall promptly provide this information to the
 14 procurement organization.

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

16 343.175 (1r) DEPARTMENT TO PROVIDE INFORMATION. In addition to the inquiry
 17 under sub. (1), if the applicant is at least ~~18~~ 15 and one-half years of age, the
 18 department shall orally state to the applicant that he or she has the opportunity to
 19 indicate his or her willingness to be an organ donor. If the applicant indicates that
 20 he or she is undecided in response to the inquiry under sub. (1), the department shall
 21 provide the applicant with written information that all organ procurement
 22 organizations and the department have together developed. If the applicant makes
 23 an affirmative response to the inquiry under sub. (1), the department shall request
 24 at that time that the applicant write on the license the information that is specified

✓
 (2)

1 under sub. (2) (ar) and affix a sticker, as described in sub. (3) (a), to the front side of
2 the license document.

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

4 343.175 (2) (title) DOCUMENT RECORD OF GIFT OR REFUSAL.

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

6 343.175 (2) (a) Except as provided in par. (ag), a part of the reverse side of each
7 license shall be printed to serve as a document record of gift under s. 157.06 (2) (b)

8 and (e) (1) (t) or a document record of refusal to make an anatomical gift under s.

9 157.06 (2) (i) (1) (u).
plain

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

11 343.175 (2) (ag) The department shall print a separate document to be issued
12 to all persons issued a commercial driver license and make provisions so that the
13 document may be attached to the reverse side of the license document along one edge.

14 This document shall serve as a document record of gift under s. 157.06 (2) (b) and (e)

15 (1) (t) or a document record of refusal to make an anatomical gift under s. 157.06 (2)

16 (i) (1) (u).
plain

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

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

****NOTE: Please review the repeal of s. 343.175 (3) (b), which provides that use of
an organ donor sticker alone does not constitute a valid gift.

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

20 343.50 (3) DESIGN AND CONTENTS OF CARD. The card shall be the same size as
21 an operator's license but shall be of a design which is readily distinguishable from
22 the design of an operator's license and bear upon it the words "IDENTIFICATION
23 CARD ONLY". The information on the card shall be the same as specified under s.

plain

1 343.17 (3). The card may serve as a document record of gift under s. 157.06 (2) (b)
2 and (e) (1) (t) and the holder may affix a sticker thereto as provided in s. 343.175 (3).
3 The card may also serve as a document record of refusal to make an anatomical gift
4 under s. 157.06 (2) (i) (1) (u). The card shall contain the holder's photograph and, if
5 applicable, shall be of the design specified under s. 343.17 (3) (a) 12.

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

7 343.50 (4m) (a) As part of every application for an identification card, the
8 department shall inquire whether the applicant desires to be an organ donor. The
9 department shall record the organ donor response in its file of the person. If a
10 procurement organization, as defined in s. 157.06 (1) (p), reasonably identifies a
11 person and requests the information recorded in the person's file under this
12 paragraph, the department shall promptly provide this information to the
13 procurement organization.

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

15 343.50 (4m) (b) In addition to the inquiry under par. (a), if the applicant is at
16 least ~~18~~ 15 and one-half years of age, the department shall orally state to the
17 applicant that he or she has the opportunity to indicate his or her willingness to be
18 an organ donor. If the applicant indicates that he or she is undecided in response to
19 the inquiry under par. (a), the department shall provide the applicant with written
20 information that all organ procurement organizations and the department have
21 together developed. If the applicant makes an affirmative response to the inquiry
22 under par. (a), the department shall request at that time that the applicant write on
23 the identification card the information that is required to make an anatomical gift
24 under s. 157.06 (2) (b) and (e) (4) and affix a sticker thereto as provided in s. 343.175
25 (3).

(5)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1835/P2dn

RLR:.....

date

Jcd

1. I renumbered the subsections under s. 157.06 to align with UAGA.

2. Please review the amendment of s. 155.20 (8). Since a health care agent has authority to make a gift under both 157.06 (4) and (9), s. 155.20 (8) should reference both. Also, since the scope of a health care agent's authority is specified in s. 157.06, I omitted the description of the scope of the authority in s. 155.20 (8).

3. I modified the description, under s. 157.06 (9) (a) 8, of a person who exhibits special care and concern to match your modification to the definition of "disinterested witness."

4. Please note changes to s. 157.06 (9) and (10) to accommodate making gifts near the death of a donor.

5. Please review the creation of 157.06 (11) (b) 2, which is based on your request to amend sub. (11) (a) 4. Subsection (11) (a) identifies who may receive an anatomical gift. (The purpose of sub. (11) (a) would be clearer if it were stated this way, but I assume you want to maintain UAGA language.) Your change allows an OPO to use tissue for a purpose other than transplant or therapy, but only if authorized by the person making the gift. This change is similar in nature to the provision under sub. (11) (b), so I added it to par. (b).

6. This draft incorporates portions of 42 CFR 482.45 into s. 157.06 (14m). Please review the changes.

7. Other changes are in s. 157.06 (2) (c) and (d), (4) (d), (5) (a) 1., (8) (a), (11) (a) (intro.) and 2., (c) (intro.) and 3., (d), (e), and (h), (13) (b), (14) (a) 3., (b), (c), (e), and (g), (18) (c), (19), (23m) (a) (intro.) and (c), and (24m) (a) 1.

Robin Ryan
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2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1835/P2ins
RLR:.....

1 **Ins 3-10:**

2 155.20 (8) A health care agent may make an anatomical gift under s. 157.06
3 (3) (a) 7. of all or a part of the principal's body after the principal's death unless the
4 principal made an unrevoked refusal to make that anatomical gift as provided under
5 s. 157.06 (4) (b) or (9) (a) 1.

6 History: 1989 a. 200; 1991 a. 84, 269, 281; 1995 a. 200; 1997 a. 206.

7
8 **Ins 11-10:**

9 ~~NO~~ unless a health care agent under ch. 155 has authority to make an anatomical
10 gift of the donor's body or part

11
12 **Ins 18-16:**

13 ~~NO~~ ^{available} may, in the manner provided in sub. (10), make an anatomical gift of the body
14 or part of an individual who is near death or has died:

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

18
19 **Ins 21-7:**

20 ~~NO~~ designated by the person making the anatomical gift into which individual's
21 body a part is intended to be transplanted ~~NO~~

22
23 **Ins 21-15**
 ↓

INS 21-15

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

(end ins)

6 **Ins 28-3:**

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

NO
8 2 CS

9 **(14m) Coordination of procurement and use; duties of hospitals.** Each

10 hospital shall do all of the following:

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

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

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

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



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

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

12 (e) Ensure that the hospital works cooperatively with the procurement
13 organizations with which it has agreements with under par. (a) [✓] in educating staff on
14 donation issues, reviewing death records to improve identification of potential
15 donors, and maintaining potential donors while necessary testing and placement of
16 potential donated organs, tissues, and eyes takes place.

(end ins 28-3)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1835/P2dn
RLR:jld:nwn

July 12, 2007

1. I renumbered the subsections under s. 157.06 to align with UAGA.
2. Please review the amendment of s. 155.20 (8). Since a health care agent has authority to make a gift under both s. 157.06 (4) and (9), s. 155.20 (8) should reference both. Also, since the scope of a health care agent's authority is specified in s. 157.06, I omitted the description of the scope of the authority in s. 155.20 (8).
3. I modified the description, under s. 157.06 (9) (a) 8., of a person who exhibits special care and concern to match your modification to the definition of "disinterested witness."
4. Please note changes to s. 157.06 (9) and (10) to accommodate making gifts near the death of a donor.
5. Please review the creation of s. 157.06 (11) (b) 2., which is based on your request to amend sub. (11) (a) 4. Subsection (11) (a) identifies who may receive an anatomical gift. (The purpose of sub. (11) (a) would be clearer if it were stated this way, but I assume you want to maintain UAGA language.) Your change allows an OPO to use tissue for a purpose other than transplant or therapy, but only if authorized by the person making the gift. This change is similar in nature to the provision under sub. (11) (b), so I added it to par. (b).
6. This draft incorporates portions of 42 CFR 482.45 into s. 157.06 (14m). Please review the changes.
7. Other changes are in s. 157.06 (2) (c) and (d), (4) (d), (5) (a) 1., (8) (a), (11) (a) (intro.) and 2., (c) (intro.) and 3., (d), (e), and (h), (13) (b), (14) (a) 3., (b), (c), (e), and (g), (18) (c), (19), (23m) (a) (intro.) and (c), and (24m) (a) 1.

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Ryan, Robin

From: Maroney Lisa A. [LMaroney@uwhealth.org]
Sent: Wednesday, August 01, 2007 2:18 PM
To: Becher, Scott; Tuschen, Terry
Cc: Sweet, Richard; Ryan, Robin; mmcally@fmlh.edu
Subject: UAGA Draft

Greetings:

I have heard back from everyone in our organization and this is the consensus regarding Dick's suggestions:

We would like to proceed with one entire draft rather than incremental changes

On the first bullet point we would like to use the broader definition of tissue.

Bullet #2 we agree with Dick and would like the draft to reflect the use of the term "vascularized organ."

On the last point we would like to use the 15.5 age and initial legislative inquiries that Foretert made would seem to indicate this may not be of concern. We agree with Dick's point about additional language and would like to add, "unless objection by the minor is known by the recipient."

Please let me know if there are further questions or concerns. THANKS.

From: Sweet, Richard
Sent: Monday, July 16, 2007 11:02 AM
To: Wieckert, Steve; Becher, Scott
Subject: FW: Draft review: LRB 07-1835/P2 Topic: Anatomical gifts

Steve/Scott,

I took a look at LRB-1835/P2. The draft repeals and recreates the current anatomical gift statute, although it retains provisions that were enacted last session dealing with coroners/medical examiners and disclosing that tissue may end up with for-profit entities. It's good that the draft retains those, since you probably don't want to fight those battles again.

However, I wonder if a better approach to the new Uniform Act might be to review it and make incremental changes to Wisconsin law, rather than repealing and recreating what seems to work pretty well. You might want to work through with representatives of OPOs the memo I prepared (copy attached) that compares the new Uniform Act with Wisconsin law, and determine what changes are good. Those changes could then be made to current Wisconsin law.

However, if you decide to stick with the approach in the current draft, I have a few suggestions:

- The word "tissue" in current law is defined as skin, connective tissue, and cardiovascular tissue. The word "tissue" in the draft is defined as a portion of the human body other than an organ or eye or blood (except for research). This would then seem to include things like sperm and ova and other fluids. You might want to check with the OPOs to see if this is a

08/01/2007

desirable change.

- The term "vascularized organ" is defined. However, "part" and "tissue" are defined by referring to "organ". You might want to define "part" and "tissue" by referring to "vascularized organ".
- One item raises a red flag. Under current law, minors generally can't make anatomical gifts. Under the draft, someone who is 15 and 1/2 can make an anatomical gift. No parental consent seems to be required. Is this your intent? The draft also allows a parent of an unemancipated minor to make an anatomical gift. You may want to add in a phrase such as "unless the minor objects".

Dick Sweet

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