LRB-0595/1 DAK:lmk&kjf:rs

2005 SENATE BILL 73

February 22, 2005 – Introduced by Senators Roessler, Brown, Cowles, Olsen, Miller, Wirch, Robson and Darling, cosponsored by Representatives Hundertmark, Strachota, Ballweg, Krawczyk, Kerkman, Townsend, Lehman, Bies, Van Roy, Hines, Hahn, Gronemus, Musser, Stone, Vruwink, Seidel, Wasserman, Boyle, Berceau, Gielow, Kreibich, Vrakas and Gunderson. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

AN ACT to repeal 157.06 (2) (d); to amend 154.03 (2) (form), 157.06 (2) (i) (intro.),

157.06 (6) (b) and 157.06 (8) (b); and to create 154.06, 157.06 (2) (f) 7. and

157.06 (2) (i) 2m. of the statutes; relating to: creating the option to make an anatomical gift as part of a living will and eliminating the designation of a specific physician to perform transplantation.

Analysis by the Legislative Reference Bureau

Under current law, a person who is at least 18 years old may donate all or part of his or her body after death (make an anatomical gift) by signing a document of gift, together with two witnesses, or by signing the reverse side of a regular driver's license, a document that may be attached to a commercial driver's license, or an identification card that is issued by the Department of Transportation. In addition, a person may specify in a power of attorney for health care instrument that he or she wishes to make an anatomical gift. A person may also refuse to make an anatomical gift; limit an anatomical gift to specific purposes, including particular donees; require that a particular physician carry out the appropriate procedures; amend an anatomical gift; or revoke an anatomical gift. Lastly, a person may revoke or amend a refusal to make an anatomical gift. Any anatomical gift made by the donor that is not revoked by the donor before death is irrevocable and does not require the consent of anyone after the donor's death.

Also under current law, a person may execute a declaration to physicians (commonly known as a living will), which authorizes a physician to withhold or

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an anatomical gift upon my death.

withdraw life-sustaining procedures or feeding tubes from the person when the person is in a terminal condition or is in a persistent vegetative state.

This bill authorizes a person who executes a living will to make an anatomical gift, amend such a gift, revoke an anatomical gift, or refuse to make an anatomical gift, as part of the living will. The bill permits the declarant of the living will to donate all of his or her organs, tissues, and eyes or to donate only specific organs, tissues, or eyes. Further, the bill permits the living will declarant to donate to a specific donee or, if that individual is not able to be a transplant recipient, to donate to any suitable person. Lastly, the bill permits the living will declarant to donate his or her organs, tissues, or eyes to a recovery agency for research and education if his or her organs, tissues, or eyes are unsuitable for transplantation. The bill specifies that failure to make an indication of desire or refusal to make an anatomical gift does not create a presumption about the declarant's intent with regard to the matter.

The bill eliminates the provision, under the anatomical gift laws, that permits a person to require that a particular physician carry out the procedures to make an anatomical gift.

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

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

SECTION 1. 154.03 (2) (form) of the statutes is amended to read: 1 $\mathbf{2}$ 154.03 **(2)** (form) 3 DECLARATION TO PHYSICIANS 4 (WISCONSIN LIVING WILL) 5 I,..., being of sound mind, voluntarily state my desire that my dying not be 6 prolonged under the circumstances specified in this document. Under those 7 circumstances, I direct that I be permitted to die naturally. If I am unable to give 8 directions regarding the use of life-sustaining procedures or feeding tubes, I intend 9 that my family and physician honor this document as the final expression of my legal right to refuse medical or surgical treatment. 10

In addition, I may, by this document, specify my wishes with respect to making

1. If I have a TERMINAL CONDITION, as determined by 2 physicians who
have personally examined me, I do not want my dying to be artificially prolonged and
I do not want life-sustaining procedures to be used. In addition, the following are
my directions regarding the use of feeding tubes:
YES, I want feeding tubes used if I have a terminal condition.
NO, I do not want feeding tubes used if I have a terminal condition.
If you have not checked either box, feeding tubes will be used.
2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2
physicians who have personally examined me, the following are my directions
regarding the use of life-sustaining procedures:
YES, I want life-sustaining procedures used if I am in a persistent
vegetative state.
NO, I do not want life-sustaining procedures used if I am in a persistent
vegetative state.
If you have not checked either box, life-sustaining procedures will be used.
3. If I am in a PERSISTENT VEGETATIVE STATE, as determined by 2
physicians who have personally examined me, the following are my directions
regarding the use of feeding tubes:
YES, I want feeding tubes used if I am in a persistent vegetative state.
NO, I do not want feeding tubes used if I am in a persistent vegetative state.
If you have not checked either box, feeding tubes will be used.
If you are interested in more information about the significant terms used in
this document, see section 154.01 of the Wisconsin Statutes or the information
accompanying this document.

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1 ATTENTION: You and the 2 witnesses must sign the document at the same $\mathbf{2}$ time. 3 Signed Date 4 Address Date of birth 5 I believe that the person signing this document is of sound mind. I am an adult 6 and am not related to the person signing this document by blood, marriage or adoption. I am not entitled to and do not have a claim on any portion of the person's 7 8 estate and am not otherwise restricted by law from being a witness. 9 Witness signature Date signed 10 Print name Witness signature ... Date signed 11 12 Print name 13 DIRECTIVES TO ATTENDING PHYSICIAN 14 1. This document authorizes the withholding or withdrawal of life-sustaining 15 procedures or of feeding tubes when 2 physicians, one of whom is the attending 16 physician, have personally examined and certified in writing that the patient has a terminal condition or is in a persistent vegetative state. 17 18 2. The choices in this document were made by a competent adult. Under the 19 law, the patient's stated desires must be followed unless you believe that withholding

or withdrawing life-sustaining procedures or feeding tubes would cause the patient

pain or reduced comfort and that the pain or discomfort cannot be alleviated through

pain relief measures. If the patient's stated desires are that life-sustaining

procedures or feeding tubes be used, this directive must be followed.

1	3. If you feel that you cannot comply with this document, you must make a good		
2	faith attempt to transfer the patient to another physician who will comply. Refusal		
3	or failure to make a good faith attempt to do so constitutes unprofessional conduct.		
4	4. If you know that the patient is pregnant, this document has no effect during		
5	her pregnancy.		
6	* * * *		
7	The person making this living will may use the following space to record the		
8	names of those individuals and health care providers to whom he or she has given		
9	copies of this document:		
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11			
12			
13	* * * * *		
14	ANATOMICAL GIFTS (optional)		
15	At my death, the following are my directions regarding donation of my organs		
16	or tissues:		
17	YES, I want to donate all of my organs, tissues, and eyes as an anatomical		
18	gift.		
19	$\underline{\mathrm{OR}}$		
20	YES, I want to donate only the following specific organs or tissues of my body		
21	or my eyes as an anatomical gift:		
22	Organs for transplantation (indicate yes or no):		
23	1. Heart:		
24	2. Liver:		
25	3. Lungs:		

1	4. Kidneys:
2	5. Pancreas:
3	6. Intestine:
4	7. All organs listed:
5	Tissues for transplantation (indicate yes or no):
6	1. Heart valves:
7	2. Skin:
8	3. Bone:
9	4. Connective tissue:
10	5. Saphenous vein:
11	6. Femoral vein:
12	7. All tissues listed:
13	Eyes for transplantation (indicate yes or no):
14	If I have signified "YES" to either of the options above, in addition, I may, but
15	do not have to, indicate any or all of the following:
16	1. I want to donate my (list of organs, tissues, or eyes) to: (name of the
17	donee), but if that person is not able to be a transplant recipient, then I donate to
18	anyone for whom the anatomical gift is suitable.
19	2. I want to donate any or all of my organs, tissues, or eyes for the purpose of
20	transplantation, but if transplantation is not able to occur, or my organs, tissues, or
21	eyes are unsuitable for transplantation, I want to donate any or all of my organs,
22	tissues, or eyes to a recovery agency for research and education.
23	$\underline{\mathrm{OR}}$
24	NO, I do not want to donate any or all of my organs, tissues, or eyes as an
25	anatomical gift.

procedures specified in s. 157.06.

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If I do not check any of the lines immediately above, no problem to make an refuse to make an arctanical wift	_
about my desire to make or refuse to make an anatomical gift	
Signed	<u>Date</u>
SECTION 2. 154.06 of the statutes is created to read:	
154.06 Organ donation; amendment; revocation	n; refusal. (1) A
declarant may make an anatomical gift of any or all of his or h	er organs, tissues, or
eyes by indicating his or her intent in the space provided or	n the declaration. A
declaration that so indicates the declarant's intent serves as a d	ocument of gift unde
s. 157.06 (2) (b).	
(2) A declarant who has made an anatomical gift as spe	cified in sub. (1) may
amend his or her gift by adding to or changing the donor author	orization in the space
provided on the declaration or by performing any of the proce	edures specified in s
157.06 (2) (f) 1. to 4.	
(3) A declarant who has made an anatomical gift as spe	cified in sub. (1) may
revoke his or her gift by crossing out the donor authorization i	in the space provided
on the declaration or by performing any of the procedures spe	cified in s. 157.06 (2
(f) 1. to 4.	
(4) A declarant may refuse to make an anatomical gift of a	any or all of his or he
organs, tissues, or eyes by indicating his or her intent in the s	pace provided on the
declaration. A declaration that so indicates the declarant's	s intent serves as a
document of refusal to make an anatomical gift under s. 157.0	06 (2) (i).
(5) Nothing in this section requires a declarant to make	e, amend, or refuse to
make an anatomical gift by means of a declaration or otherwi	ise limits a declaran
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1	Section 3. 157.06 (2) (d) of the statutes is repealed.
2	Section 4. 157.06 (2) (f) 7. of the statutes is created to read:
3	157.06 (2) (f) 7. For a declarant who executes a living will, crossing out or
4	amending the donor authorization or refusal in the space provided on the declaration
5	as prescribed in s. 154.06 $\left(2\right)$ and $\left(4\right)$ or revoking the declaration as prescribed in s.
6	154.06 (3).
7	Section 5. 157.06 (2) (i) (intro.) of the statutes is amended to read:
8	157.06 (2) (i) (intro.) An individual may refuse to make an anatomical gift of
9	the individual's body or part of his or her body any or all of his or her organs, tissues,
10	or eyes by doing any of the following:
11	Section 6. 157.06 (2) (i) 2m. of the statutes is created to read:
12	157.06 (2) (i) 2m. For a declarant who executes a living will, making a
13	statement of refusal in the space provided in the declaration as prescribed in s.
14	154.06 (4).
15	SECTION 7. 157.06 (6) (b) of the statutes is amended to read:
16	157.06 (6) (b) A donor may make an anatomical gift to a designated donee or
17	without designating a donee. If a donee is not designated or if the donee is not
18	available or rejects designated but the anatomical gift, any hospital is not able to be
19	accepted by the donee, anyone for whom the anatomical gift is suitable may accept
20	the anatomical gift.
21	Section 8. 157.06 (8) (b) of the statutes is amended to read:
22	157.06 (8) (b) The time of death shall be determined by a physician who attends
23	the donor at death or, if none, the physician who certifies the death. Neither the
24	physician who attends the donor at death nor the physician who determines the time
25	of death may participate in the procedures for removing or transplanting a part of

- 1 the donor's body unless the document of gift designates a particular physician under
- 2 sub. (2) (d).
- 3 (END)