

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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January 13, 2000

To Senator Rosenzweig:

1. Please review this draft carefully, as it has been necessary to modify some of the drafting instructions of Dick Sweet's December 15, 1999, memorandum. When reviewing the draft, please note the following:

a. Number 1. of the instructions requires that the definition of "eye bank" be modified to mean ". . . a repository for donated tissues destined for ocular transplant surgery and research". However, s. 157.06 (1) (k), stats., defines "tissue" to include skin and cardiovascular and connective tissue, but not eyes; further, the definition of "part" in s. 157.06 (1) (g), stats., differentiates between tissue and eyes. Therefore, to avoid conflict with current law, I have retained in this draft the definition of "eye bank" that was specified in the previous draft, except that I have added "destined for ocular transplant surgery and research".

b. Number 1. of the instructions requires also that the definition of "tissue bank" be modified to be ". . . a repository for donated cardiovascular tissue, skin, bone, tendons and ligaments". However, as explained in Number 1. a. of this Drafter's Note, "tissue" is already defined under current law to include skin, cardiovascular tissue and *all* connective tissue (not just tendons and ligaments). To accommodate the instructions, I have changed the definition of tissue bank to be ". . . a repository for donated tissue and bone." Please note, however, that this definition is *more* restrictive than that in the previous draft, which had defined "tissue bank" to be ". . . a repository for donated parts other than eyes", since "part" is more broadly defined under current law than "tissue" and bone.

c. I have consolidated the appropriations, made the resulting appropriation a continuing appropriation and have, in the nonstatutory provisions, required that \$300,000 be used as the base amount for the registry for the next biennium. This procedure permits moneys that were unexpended in the appropriation in this biennium to be expended in the next biennium, regardless of the amount specified in the schedule.

d. I ascertained from Dick Sweet that Number 10. of the instructions requested a requirement that the Donor registry board promulgate rules for its own operation (and not that of the registry); I have not drafted that requirement because it appears both unnecessary and relatively unworkable; the Board would, in effect, have to meet and agree upon the rules that would regulate its meetings; the requirements under s. 15.07,

stats., should suffice, unless there is a particular factual circumstance that hasn't been explained.

e. Number 19. of the instruction requires that the bill specify that organ procurement organizations, tissue banks and eye banks may not be required to pay for the registry. Since the registry is funded from general purpose revenues, which are in part derived from taxes to which these entities are subject, I have instead drafted a provision that prohibits a requirement that the entities contribute money or any other thing of value *directly* to the registry.

2. The instructions in Dick Sweet's memorandum do not appear to address the problem that I raised in the Drafter's Note for the first draft. That problem is as follows: under current law, "document of gift" is defined to include a card, a driver's license, an identification card issued by DOT, a will or another writing (such as a power of attorney for health care). The bill amends this definition to include an enrollment form for the Wisconsin donor registry, thus adding another means by which a person might signify his or her wishes to donate. There is no statutory requirement that a document of gift be dated, although a driver's license or an identification card issued by DOT each contain a space for a date, and a will and a health care power of attorney each must be dated. All of these documents may be revoked, to indicate a person's change of mind. A revocation of a document of gift is accomplished by signing a statement of revocation; signing a new document of gift (signing a new document of gift revokes any previously signed document of gift); verbally revoking in the presence of 2 individuals; communicating with a physician while one is terminally ill or injured; delivering a signed statement of revocation to a specified donee; crossing out the gift authorization on one's driver's license or identification card; or revoking a power of attorney for health care instrument or a provision of the instrument. There is no statutory requirement that a revocation be dated. I am concerned about the situation in which a person has enrolled in the Wisconsin donor registry, which constitutes making a document of gift, but has scratched out a donation on his or her driver's license. Unless the person has dated the scratching out, which I think unlikely, it would be impossible (without some other sort of evidence) to tell whether the revocation on the driver's license or the gift under the enrollment form is the last expression of the person's intent and, therefore, rules. Obviously, this problem already exists under current law, but I am concerned that further confusion may arise with the advent of the registry; for example, a person may want to donate but may believe, for instance, that crossing out the document of gift on the driver's license would be acceptable (and less repetitious) as long as he or she has signed a registry enrollment form. Or, a person who wants to revoke may cross out the document of gift on the driver's license but fail to revoke the registry enrollment form.

There are several ways to approach this problem, should you wish to do so: one would be to prohibit changing one's designation on a driver's license or identification card except by applying for a duplicate license; this alternative might be somewhat costly, either to the person or to DOT. A second way would be to require that revoking a document of gift on a driver's license or identification card be initialled and dated. Yet

another way would be to require that all documents of gift or refusals to make a gift and all revocations be dated.

3. Please let me know if I may assist you further with this bill.

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