

**2003 DRAFTING REQUEST**

**Bill**

Received: **09/10/2003**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Roessler (608) 266-5300**

By/Representing: **Jennifer**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - decisionmaking**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Roessler@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Add binding organ donation checkoff to living wills

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 10/06/2003	kgilfoy 10/21/2003		_____			State
/1			rschluet 10/22/2003	_____	mbarman 10/22/2003	lnorthro 10/31/2003	

FE Sent For:

**<END>**

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10/22/2003 11:21:27 AM

Page 2

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Subject: Health - decisionmaking

Extra Copies: KMG

Submit via email: YES

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Topic:

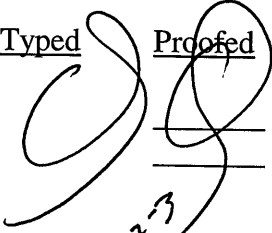
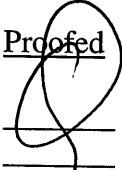
Add binding organ donation checkoff to living wills

Instructions:

See Attached

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/?	dkennedy	11-10/11 KMG					
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10-22-03

<END>

FE Sent For:

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION  
(608-266-3561)

9/10 Call from Jennifer in Sen. Roessler's office - she would like to require a check-off box on a living will for organ donation -

She wants it to be binding, but Dick Sweet said (?) that it could not be binding, that it would be like the sticker on a driver's license and a family member would have to consent to the donation.

Please call Jennifer - 6-5300

? see 157.06(2)(h)

? 343.175(2)

343.50(3)

health care power  
of attorney

check power of atty for health care



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-3376/1

DAK:...

RMG

D-NOTE

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Due 10/24

LPS: 9/4  
sending this  
on, please have  
RMG check the  
form.

Gen. Cat -

1 AN ACT ...; relating to: creating the option to make an anatomical gift as part of  
2 a living will.

**Analysis by the Legislative Reference Bureau**

Under current law, a person who is aged at least 18 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.

This bill authorizes a person who executes a declaration to physicians (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 or a part of his or her body to a specific donee or for a specific purpose and to specify a physician to carry out the appropriate procedures. 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.

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) <sup>(form)</sup> of the statutes is amended to read:

154.03 (2) <sup>(form)</sup> ~~The department shall prepare and provide copies of the declaration and accompanying information for distribution in quantities to health care professionals, hospitals, nursing homes, county clerks and local bar associations and individually to private persons. The department shall include, in information accompanying the declaration, at least the statutory definitions of terms used in the declaration, statutory restrictions on who may be witnesses to a valid declaration, a statement explaining that valid witnesses acting in good faith are statutorily immune from civil or criminal liability, an instruction to potential declarants to read and understand the information before completing the declaration and a statement explaining that an instrument may, but need not be, filed with the register in probate of the declarant's county of residence. The department may charge a reasonable fee for the cost of preparation and distribution. The declaration distributed by the department of health and family services shall be easy to read, the type size may be no smaller than 10 point, and the declaration shall be in the following form, setting forth on the first page the wording before the ATTENTION statement and setting forth on the 2nd page the ATTENTION statement and remaining wording:~~

DECLARATION TO PHYSICIANS

(WISCONSIN LIVING WILL)

*center; and change ~~initial~~ indent to "0".*



1 I,...., being of sound mind, voluntarily state my desire that my dying not be  
2 prolonged under the circumstances specified in this document. Under those  
3 circumstances, I direct that I be permitted to die naturally. If I am unable to give  
4 directions regarding the use of life-sustaining procedures or feeding tubes, I intend  
5 that my family and physician honor this document as the final expression of my legal  
6 right to refuse medical or surgical treatment.

7 1. If I have a **TERMINAL CONDITION**, as determined by 2 physicians who  
8 have personally examined me, I do not want my dying to be artificially prolonged and  
9 I do not want life-sustaining procedures to be used. In addition, the following are  
10 my directions regarding the use of feeding tubes:

11 .... YES, I want feeding tubes used if I have a terminal condition.

12 .... NO, I do not want feeding tubes used if I have a terminal condition.

13 If you have not checked either box, feeding tubes will be used.

14 2. If I am in a **PERSISTENT VEGETATIVE STATE**, as determined by 2  
15 physicians who have personally examined me, the following are my directions  
16 regarding the use of life-sustaining procedures:

17 .... YES, I want life-sustaining procedures used if I am in a persistent  
18 vegetative state.

19 .... NO, I do not want life-sustaining procedures used if I am in a persistent  
20 vegetative state.

21 If you have not checked either box, life-sustaining procedures will be used.

22 3. If I am in a **PERSISTENT VEGETATIVE STATE**, as determined by 2  
23 physicians who have personally examined me, the following are my directions  
24 regarding the use of feeding tubes:

25 .... YES, I want feeding tubes used if I am in a persistent vegetative state.

1 ... NO, I do not want feeding tubes used if I am in a persistent vegetative state.

2 If you have not checked either box, feeding tubes will be used.

3 If you are interested in more information about the significant terms used in  
4 this document, see section 154.01 of the Wisconsin Statutes or the information  
5 accompanying this document.

6 ATTENTION: You and the 2 witnesses must sign the document at the same  
7 time.

8 Signed ....

9 Date ....

Address ....

Date of birth ....

*LPS:  
Get  
rid  
of  
TABS*

10 I believe that the person signing this document is of sound mind. I am an adult  
11 and am not related to the person signing this document by blood, marriage or  
12 adoption. I am not entitled to and do not have a claim on any portion of the person's  
13 estate and am not otherwise restricted by law from being a witness.

14 Witness signature ....

Date signed ....

15 Print name ...

16 *e*

17 Witness signature ....

Date signed ....

18 Print name ...

*Get  
rid  
of  
TABS*

19 **DIRECTIVES TO ATTENDING PHYSICIAN**

20 1. This document authorizes the withholding or withdrawal of life-sustaining  
21 procedures or of feeding tubes when 2 physicians, one of whom is the attending

*center; and change initial indent to "0"*

1 physician, have personally examined and certified in writing that the patient has a  
2 terminal condition or is in a persistent vegetative state.

3 2. The choices in this document were made by a competent adult. Under the  
4 law, the patient's stated desires must be followed unless you believe that withholding  
5 or withdrawing life-sustaining procedures or feeding tubes would cause the patient  
6 pain or reduced comfort and that the pain or discomfort cannot be alleviated through  
7 pain relief measures. If the patient's stated desires are that life-sustaining  
8 procedures or feeding tubes be used, this directive must be followed.

9 3. If you feel that you cannot comply with this document, you must make a good  
10 faith attempt to transfer the patient to another physician who will comply. Refusal  
11 or failure to make a good faith attempt to do so constitutes unprofessional conduct.

12 4. If you know that the patient is pregnant, this document has no effect during  
13 her pregnancy.

14 \* \* \* \* \*

15 The person making this living will may use the following space to record the  
16 names of those individuals and health care providers to whom he or she has given  
17 copies of this document:

18 .....  
19 .....  
20 .....

*change props. on these 3 lines to not allow a break above*

21 \* \* \* \* \*

*score*

22 ANATOMICAL GIFTS (optional)

23 At my death, the following are my directions regarding donation of my organs:

.... YES, I want to donate all of my body as an anatomical gift.

OR → *center; "0" indent*

*center and change initial indent to "0"*

1 ... YES, I want to donate the following specific parts or organs of my body as  
2 an anatomical gift: *Δ.....*

3 If I have signified "YES" to either of the options above, in addition, I may, but  
4 do not have to, indicate any or all of the following:

5 a. I want to donate all or part of my body to: *Δ..... Δ* (name of the donee) *Δ.....*

6 b. I want to donate all or part of my body for this purpose: *Δ.....*

7 c. I want Dr. *Δ..... Δ* to carry out the appropriate procedures.

8 (OR) *center; "0" indent* (name of physician) Δ

9 ... NO, I do not want to donate all or any part of my body as an anatomical gift.

10 (If this revokes a prior commitment that I have made to make an anatomical gift to  
11 a designated donee, I will attempt to notify the donee to which or to whom I agreed  
12 to donate.)

13 If I do not check any of the lines immediately above, no presumption is created  
14 about my desire to make or refuse to make an anatomical gift.

15 Signed *Δ.....* Date *Δ.....*

History: 1983 a. 202; 1985 a. 199; 1991 a. 84, 281; 1995 a. 27 s. 9126 (19); 1995 a. 168.

16 **SECTION 2.** 154.06 of the statutes is created to read:

17 **154.06 Organ donation; amendment; revocation; refusal.** (1) A  
18 declarant may make an anatomical gift of all or part of his or her body by indicating  
19 his or her intent in the space provided on the declaration. A declaration that so  
20 indicates the declarant's intent serves as a document of gift under s. 157.06 (2) (b). ✓

21 (2) A declarant who has made an anatomical gift as specified in sub. (1) may  
22 amend his or her gift by adding to or changing the donor authorization in the space  
23 provided on the declaration or by performing any of the procedures specified in s.  
24 157.06 (2) (f) 1. to 4. ✓

1           **(3)** A declarant who has made an anatomical gift as specified in sub. (1) may  
2           revoke his or her gift by crossing out the donor authorization in the space provided  
3           on the declaration or by performing any of the procedures specified in s. 157.06 (2)  
4           (f) 1. to 4. ✓

5           **(4)** A declarant may refuse to make an anatomical gift of all or part of his or  
6           her body by indicating his or her intent in the space provided on the declaration. A  
7           declaration that so indicates the declarant's intent serves as a document of refusal  
8           to make an anatomical gift under s. 157.06 (2) (i). ✓

9           **(5)** Nothing in this section requires a declarant to make, amend, or refuse to  
10           make an anatomical gift by means of a declaration or otherwise limits a declarant  
11           from making, amending<sup>✓</sup> or refusing to make an anatomical gift under alternative  
12           procedures specified in s. 157.06. ✓

13           **SECTION 3.** 157.06 (2) (f) 7. of the statutes is created to read:

14           157.06 (2) (f) 7. For a declarant who executes a living will, crossing out or  
15           amending the donor authorization or refusal in the space provided on the declaration  
16           as prescribed in s. 154.06 (2)<sup>✓</sup> and (4)<sup>✓</sup> or revoking the declaration as prescribed in  
17           s.154.06 (3). ✓

18           **SECTION 4.** 157.06 (2) (i) 2m. of the statutes is created to read:

19           157.06 (2) (i) 2m. For a declarant who executes a living will, making a  
20           statement of refusal in the space provided in the declaration as prescribed in s.  
21           154.06 (4). ✓

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3376/dn

DAK: /:....  
*King*

To Senator Roessler:

In s. 154.06 (2) and (3), do you want s. 157.06 (2) (f) 3. to apply, as I have drafted?

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.state.wi.us](mailto:debora.kennedy@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3376/1dn  
DAK:kmg:rs

October 22, 2003

To Senator Roessler:

In s. 154.06 (2) and (3), do you want s. 157.06 (2) (f) 3. to apply, as I have drafted?

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: [debora.kennedy@legis.state.wi.us](mailto:debora.kennedy@legis.state.wi.us)

**Northrop, Lori**

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**From:** Halbur, Jennifer  
**Sent:** Friday, October 31, 2003 8:42 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-3376/1 Topic: Add binding organ donation checkoff to living wills

It has been requested by <Halbur, Jennifer> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-3376/1 Topic: Add binding organ donation checkoff to living wills