

2005 SENATE BILL 395

October 19, 2005 – Introduced by Senators A. LASEE, ROESSLER, BROWN, DARLING, MILLER and LASSA, cosponsored by Representatives OTT, GIELOW, WIECKERT, WASSERMAN, STRACHOTA, STASKUNAS, TOWNSEND, KERKMAN, VAN ROY, HAHN, ALBERS, SHERIDAN, BIES, KESTELL, GUNDERSON, HINES, LOTHIAN and MOULTON. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT to amend** 157.06 (1) (c), 157.06 (3) (c) 1., 157.06 (3) (c) 2., 157.06 (4) (am)
2 2., 157.06 (5) (b) 1. and 157.06 (5) (b) 2.; and **to create** 157.06 (1) (am), 157.06
3 (1) (eg), 157.06 (1) (er), 157.06 (1) (km) and 157.06 (6m) of the statutes; **relating**
4 **to:** consent for the recovery, processing, or distribution of certain anatomical
5 gifts.

Analysis by the Legislative Reference Bureau

Under current law, a donation may be made of all or part of a human's body (an anatomical gift), to take effect at death. The following persons may make an anatomical gift:

1. The donor, by executing a document of gift that is signed by the donor or by another individual and two witnesses in the presence of the donor, that is specified on a driver's license or identification card that is issued by the Department of Transportation, or that is specified under a will.

2. The spouse, close relative, guardian, or health care agent of the donor after the donor's death (unless the decedent has made an unrevoked refusal to consent to making an anatomical gift), by executing a signed document of gift or by making a telegraphic, recorded telephonic or other recorded message, or other form of communication to another that is reduced to writing and signed by the recipient when received.

3. A coroner or medical examiner, upon request from a hospital, physician, or organ procurement organization, under limited circumstances.

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This bill requires that a hospital, organ procurement organization, tissue bank (as defined in the bill), coroner, or medical examiner that requests an anatomical gift from a potential donor or a spouse, close relative, guardian, or health care agent of a deceased potential donor provide in the document of gift (or, if the document of gift is transmitted electronically, specifically ask about) certain requests for activities that must be consented to or refused. The activities have to do with recovering, processing, or distributing donated skin for purposes of cosmetic surgery; recovering, processing, or distributing donated tissue (including skin) for applications outside the United States; and recovering, processing, or distributing donated tissue by a for-profit corporation before final use is made of the tissue for a patient or for purposes of research. If the donor or the spouse, close relative, guardian, or health care agent fails, in the document of gift, to initial or sign a requested activity, consent for that activity is refused. The hospital, organ procurement organization, tissue bank, coroner, or medical examiner who obtains an executed document of gift must provide a copy of the document to the donor or other person who executed it.

The bill permits an anatomical gift donor or his or her estate to recover civil damages of not less than \$1,000 nor more than \$10,000, plus court costs, from a person who fails to comply with the donor's refusal of consent for any of the activities. Further, the bill provides that an intentional action by a health care provider that is contrary to the donor's refusal of consent for the activities is unprofessional conduct. Lastly, the bill establishes a standard, for an individual or entity that receives donated skin or other tissue, for compliance with the donor's consent to or refusal for any of the activities and specifies a limit on the responsibility of that individual or entity.

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

1 **SECTION 1.** 157.06 (1) (am) of the statutes is created to read:

2 157.06 (1) (am) “Cosmetic surgery” means surgery that is performed to alter
3 or reshape a normal structure of the body in order to improve appearance. “Cosmetic
4 surgery” does not include reconstructive surgery that is performed to correct or
5 repair an abnormal structure of the body that is caused by congenital defect,
6 developmental abnormality, trauma, infection, tumor, or disease for the purpose of
7 improving function or, to the extent possible, creating a normal appearance.

8 **SECTION 2.** 157.06 (1) (c) of the statutes is amended to read:

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1 157.06 (1) (c) “Document of gift” means a card, a statement attached to or
2 imprinted on a license under s. 343.175 (2) or on an identification card under s.
3 343.50 (3), a will, or another writing, including a writing under sub. (3) (c) 2., that
4 is used to make an anatomical gift.

5 **SECTION 3.** 157.06 (1) (eg) of the statutes is created to read:

6 157.06 (1) (eg) “For-profit corporation” means any corporation that is not
7 exempt from taxation under section 501 (c) (3) of the Internal Revenue Code.

8 **SECTION 4.** 157.06 (1) (er) of the statutes is created to read:

9 157.06 (1) (er) “Health care provider” has the meaning given in s. 146.81 (1).

10 **SECTION 5.** 157.06 (1) (km) of the statutes is created to read:

11 157.06 (1) (km) “Tissue bank” means a corporation that recovers, processes, or
12 distributes tissue for transplantation into humans.

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

14 157.06 (3) (c) 1. Executing Subject to sub. (6m), if applicable, executing a
15 document of gift that is signed by the individual.

16 **SECTION 7.** 157.06 (3) (c) 2. of the statutes is amended to read:

17 157.06 (3) (c) 2. Making Subject to sub. (6m), if applicable, making a document
18 of gift by means of a telegraphic, recorded telephonic or other recorded message, or
19 other form of communication to another that is reduced to writing and signed by the
20 recipient at the time it is received.

21 **SECTION 8.** 157.06 (4) (am) 2. of the statutes is amended to read:

22 157.06 (4) (am) 2. The official has made a reasonable effort, taking into account
23 the useful life of the part of the body, to locate and examine the decedent’s medical
24 records and, subject to sub. (6m), inform individuals listed in sub. (3) (a) of their
25 option to make, or object to making, an anatomical gift.

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

2 157.06 (5) (b) 1. If at or near the time of death of a patient there is no medical
3 record or evidence obtained under par. (c) that the patient has made, revoked or
4 refused to make an anatomical gift, the hospital administrator or a representative
5 designated by the administrator shall discuss with an available individual, under
6 the priority established in sub. (3) (a), the option to make or refuse to make an
7 anatomical gift and request, subject to sub. (6m), that the individual make an
8 anatomical gift of all or a part of the decedent's body. Alternatively, the administrator
9 shall contact by telephone the organ procurement organization designated for the
10 region of which the hospital is a part. If the administrator or representative contacts
11 the organ procurement organization, he or she shall provide the organ procurement
12 organization with the identifier number of the patient, the patient's age, the actual
13 or potential cause of the patient's death and, if available, the patient's medical
14 history.

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

16 157.06 (5) (b) 2. If the organ procurement organization is contacted under subd.
17 1., the organ procurement organization shall, in consultation with the attending
18 physician of the patient under subd. 1., determine if an anatomical gift is suitable,
19 based upon accepted medical standards, for a purpose specified in sub. (6) (a). If the
20 organ procurement organization and the patient's attending physician determine
21 that an anatomical gift is not so suitable, hospital personnel shall make a notation
22 to this effect in the patient's medical record. If the organ procurement organization
23 and the patient's attending physician determine that an anatomical gift is so
24 suitable, an organ procurement organization representative or a requester
25 designated by the organ procurement organization shall discuss with an available

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1 individual, under the priority established in sub. (3) (a), the option to make or refuse
2 to make an anatomical gift and request, subject to sub. (6m), that the individual
3 make an anatomical gift of all or a part of the decedent's body.

4 **SECTION 11.** 157.06 (6m) of the statutes is created to read:

5 157.06 **(6m)** CONSENT FOR CERTAIN USES OF TISSUE; REQUIREMENTS. (a) A hospital,
6 organ procurement organization, tissue bank, coroner, or medical examiner that
7 provides a document of gift to a potential donor or to an individual under sub. (3) (a)
8 shall include in the document of gift specific requests for consent and opportunities
9 for refusal by the donor or individual for all of the following:

10 1. The recovery, processing, or distribution of donated skin, for purposes of
11 cosmetic surgery.

12 2. The recovery, processing, or distribution of donated tissue, for applications
13 outside the United States.

14 3. The recovery, processing, or distribution of donated tissue by a for-profit
15 corporation before final use is made of the tissue for a patient or for purposes of
16 research.

17 (b) The document of gift under par. (a) shall include, adjacent to each of the
18 requests for consent under par. (a) 1., 2., and 3., a space for the donor's or individual's
19 consent or refusal and a line or space for the donor's or individual's initials or
20 signature. Failure of the donor or individual to initial or sign a request for consent
21 or a refusal for an activity under par. (a) 1., 2., or 3. is a refusal to make an anatomical
22 gift for that activity.

23 (c) If an individual under sub. (3) (a) makes an anatomical gift under sub. (3)
24 (c) 2. at the request of a hospital, organ procurement organization, tissue bank,
25 coroner, or medical examiner, the requester shall specifically request consent from

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1 the individual for each of the activities under par. (a) 1., 2., and 3. and shall note the
2 request and response on the document received.

3 (d) The requester under par. (a) or (c) shall provide the donor or the individual
4 under sub. (3) (a), as applicable, with a copy of any document of gift executed under
5 the requirements of this subsection.

6 (e) 1. A donor or his or her estate or an individual under sub. (3) (a) may recover
7 civil damages of not less than \$1,000 nor more than \$10,000, plus court costs, from
8 a person who does not comply with the donor's or individual's refusal of consent
9 under par. (a) or (c).

10 2. An intentional action that is contrary to a donor's or an individual's refusal
11 of consent under par. (a) or (c) by a health care provider who is an individual is
12 unprofessional conduct by the health care provider.

13 3. For purposes of subs. 1. and 2., an individual or entity that receives donated
14 skin or other tissue is considered to have complied with a refusal of consent under
15 par. (a) or (c) if the individual or entity designates skin or other tissue that has been
16 donated with restrictions under par. (a) or (c) or states or records any refusal of
17 consent in documents that may be maintained with regard to the donated skin or
18 other tissue. After the individual or entity transfers the donated skin or other tissue
19 to another entity, along with the designation or documentation, the transferor's
20 responsibility for compliance with the refusal of consent ceases.

SECTION 12. Initial applicability.

21 (1) This act first applies to requests for anatomical gifts that are made on the
22 effective date of this subsection.
23

SECTION 13. Effective date.
24

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1 (1) This act takes effect on this first day of the 7th month beginning after
2 publication.

3 **(END)**