

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 395**

January 17, 2006 – Offered by Senator A. LASEE.

1 **AN ACT** *to renumber and amend* 157.06 (3) (c) 2.; *to amend* 157.06 (1) (c),
2 157.06 (3) (c) 1., 157.06 (4) (am) 2., 157.06 (5) (b) 1. and 157.06 (5) (b) 2.; and *to*
3 **create** 157.06 (1) (km), 157.06 (3) (c) 2. a., 157.06 (3) (c) 2. b., 157.06 (3) (c) 2.
4 c., 157.06 (6m) and 157.06 (10m) of the statutes; **relating to:** consent for the
5 uses of certain anatomical gifts and providing a penalty.

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 an individual after the individual'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.

This substitute amendment 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 individual provide in the document of gift two sentences concerning the potential uses of donated bones or tissues by multiple organizations, including nonprofit and for-profit organizations, and the fact that limitations on those uses or limitations on the types of organizations that recover, process, or distribute the donation may be specified in a document of gift. The document of gift must also include lines or spaces for the donor or the spouse, close relative, guardian, or health care agent to acknowledge reading the sentences or having them read to him or her, and to limit the use of bones or tissues or to limit the types of organizations that recover, process, or distribute the donations. If the donor, spouse, close relative, guardian, or health care agent makes an anatomical gift, the requesting hospital, organ procurement organization, tissue bank, coroner, or medical examiner must provide the telephone number and address of the agency or organization that recovers the anatomical gift. If a hospital, organ procurement organization, tissue bank, coroner, or medical examiner is requesting an anatomical gift from the spouse, close relative, guardian, or health care agent by means of a telephonic or other recorded message, the requestor must inform the spouse, relative, guardian, or agent that the conversation is recorded and that a recorded copy is available on request; must read the sentences concerning potential uses of donated bones or tissues by multiple organizations and limitations on those uses or on the types of organizations that recover, process, or distribute the donation; and must note on the document of gift the acknowledgement of the sentences. If the donor or the spouse, close relative, guardian, or health care agent fails, in the document of gift, to initial or sign the acknowledgement, consent to make an anatomical gift of bones or tissues 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 substitute amendment requires that, by January 1, 2007, the Department of Health and Family Services study and report to the legislature concerning the need for a uniform document of gift form specifically for hospitals, organ procurement organizations, tissue banks, coroners, and medical examiners to provide, under these circumstances, to potential donors or spouses, close relatives, guardians, or health care agents of deceased individuals.

Under the substitute amendment, failure to comply with the requirement to provide the sentences concerning the potential uses of donated bones or tissues and limitations on those uses may be subject to a forfeiture of not less than \$500 nor more than \$1,000 for each violation.

The substitute amendment eliminates the use of a telegraphic message to make a document of gift.

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

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

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

6 **SECTION 2.** 157.06 (1) (km) of the statutes is created to read:

7 157.06 (1) (km) “Tissue bank” means a corporation that recovers, processes, or
8 distributes tissue for transplantation into humans.

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

10 157.06 (3) (c) 1. ~~Executing~~ Subject to sub. (6m), if applicable, executing a
11 document of gift that is signed by the individual.

12 **SECTION 4.** 157.06 (3) (c) 2. of the statutes is renumbered 157.06 (3) (c) 2. (intro.)
13 and amended to read:

14 157.06 (3) (c) 2. (intro.) ~~Making a telegraphic,~~ Subject to sub. (6m), if applicable,
15 making a recorded telephonic or other recorded message, or other form of
16 communication, to another that is reduced to writing and signed by the recipient at
17 the time it is received. In the instance of a recorded message in which a hospital,
18 organ procurement organization, tissue bank, coroner, or medical examiner is
19 requesting an anatomical gift, the hospital, organ procurement organization, tissue
20 bank, coroner, or medical examiner shall do all of the following:

21 **SECTION 5.** 157.06 (3) (c) 2. a. of the statutes is created to read:

1 157.06 (3) (c) 2. a. Inform the individual that the conversation is recorded and
2 that a recorded copy of the conversation is available upon request and, if requested,
3 provide such a copy.

4 **SECTION 6.** 157.06 (3) (c) 2. b. of the statutes is created to read:

5 157.06 (3) (c) 2. b. Read aloud to the individual the sentences required under
6 sub. (6m) (a).

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

8 157.06 (3) (c) 2. c. Note on the request form that the individual has been read
9 the sentences required under sub. (6m) (a) and note any limitations that the
10 individual imposes on the use of the bones or tissues or the types of organizations
11 that recover, process, or distribute the donation. If the procedure under this
12 subdivision is followed, the individual's signature or initials, as specified in sub. (6m)
13 (b), are not required.

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

15 157.06 (4) (am) 2. The official has made a reasonable effort, taking into account
16 the useful life of the part of the body, to locate and examine the decedent's medical
17 records and, subject to sub. (6m), inform individuals listed in sub. (3) (a) of their
18 option to make, or object to making, an anatomical gift.

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

20 157.06 (5) (b) 1. If at or near the time of death of a patient there is no medical
21 record or evidence obtained under par. (c) that the patient has made, revoked or
22 refused to make an anatomical gift, the hospital administrator or a representative
23 designated by the administrator shall discuss with an available individual, under
24 the priority established in sub. (3) (a), the option to make or refuse to make an
25 anatomical gift and request, subject to sub. (6m), that the individual make an

1 anatomical gift of all or a part of the decedent's body. Alternatively, the administrator
2 shall contact by telephone the organ procurement organization designated for the
3 region of which the hospital is a part. If the administrator or representative contacts
4 the organ procurement organization, he or she shall provide the organ procurement
5 organization with the identifier number of the patient, the patient's age, the actual
6 or potential cause of the patient's death and, if available, the patient's medical
7 history.

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

9 157.06 **(5)** (b) 2. If the organ procurement organization is contacted under subd.
10 1., the organ procurement organization shall, in consultation with the attending
11 physician of the patient under subd. 1., determine if an anatomical gift is suitable,
12 based upon accepted medical standards, for a purpose specified in sub. (6) (a). If the
13 organ procurement organization and the patient's attending physician determine
14 that an anatomical gift is not so suitable, hospital personnel shall make a notation
15 to this effect in the patient's medical record. If the organ procurement organization
16 and the patient's attending physician determine that an anatomical gift is so
17 suitable, an organ procurement organization representative or a requester
18 designated by the organ procurement organization shall discuss with an available
19 individual, under the priority established in sub. (3) (a), the option to make or refuse
20 to make an anatomical gift and request, subject to sub. (6m), that the individual
21 make an anatomical gift of all or a part of the decedent's body.

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

23 157.06 **(6m)** CONSENT FOR OR LIMITATION ON CERTAIN USES OF BONES OR TISSUE;
24 REQUIREMENTS. (a) A hospital, organ procurement organization, tissue bank, coroner,
25 or medical examiner that provides a document of gift to a potential donor or to an

1 individual under sub. (3) (a) shall include in the document of gift the following
2 sentences: “I understand that donated bones or tissues, including skin, may have
3 numerous uses, including for reconstructive and cosmetic purposes, and that
4 multiple organizations, including nonprofit and for-profit organizations, may
5 recover, process, or distribute the donations. I further understand that I may, by this
6 document, limit the use of the bones or tissues, including skin, that are donated or
7 types of organizations that recover, process, or distribute the donation.”

8 (b) The document of gift under par. (a) shall include, following the 2nd sentence
9 required in par. (a), all of the following:

10 1. A line or space for the donor or individual under sub. (3) (a) to sign or initial
11 to acknowledge that he or she has read the sentences specified in par. (a) or that the
12 sentences have been read aloud to him or her. Except as provided in sub. (3) (c) 2.
13 c., failure of the donor or individual to place his or her initials or signature in the line
14 or space is a refusal to make an anatomical gift of bones or tissues.

15 2. A line or space for the donor or individual under sub. (3) (a) to sign or initial
16 and specify a limitation, if any, on the use of bones or tissues or on the types of
17 organizations that recover, process, or distribute the donation.

18 (c) If a potential donor or individual makes an anatomical gift under this
19 subsection, the hospital, organ procurement organization, tissue bank, coroner, or
20 medical examiner that provides to the donor or individual a document of gift under
21 par. (a) shall also provide the donor or individual with the telephone number and
22 address of the agency or organization that recovers the anatomical gift.

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

SECTION 12. 157.06 (10m) of the statutes is created to read:

157.06 (10m) PENALTY. Whoever fails to comply with the requirement to provide sentences under sub. (3) (c) 2. b. or sub. (6m) (a) may be subject to a forfeiture of not less than \$500 nor more than \$1,000 for each violation.

SECTION 13. Nonstatutory provisions.

(1) **STUDY ON DOCUMENT OF GIFT FORM.** The department of health and family services shall study and, by January 1, 2007, report to the legislature in the manner provided under section 13.172 (3) of the statutes concerning the need for a uniform document of gift form specifically for hospitals, organ procurement organizations, tissue banks, coroners, or medical examiners to provide to potential anatomical gift donors or other individuals under section 157.06 (6m) of the statutes. In conducting the study, the department of health and family services shall consult with hospitals, organ procurement organizations, tissue banks, coroners, and medical examiners.

SECTION 14. Initial applicability.

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

SECTION 15. Effective date.

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

(END)