

Kennedy, Debora

From: Kennedy, Debora
Sent: Monday, June 27, 2005 10:59 AM
To: Napralla, Erin; Sweet, Richard
Subject: RE: Bill Draft

Maybe a good way to resolve this and at the same time make the statutes clearer would be to both amend the definition of "document of gift" to specifically include written documents under s. 157.06 (3) (c) 2. and to amend s. 157.06 (3) (c) 2. itself, like this: "Making A DOCUMENT OF GIFT BY MEANS OF" a telegraphic, recorded telephonicetc."

-----Original Message-----

From: Napralla, Erin
Sent: Monday, June 27, 2005 10:39 AM
To: Kennedy, Debora
Subject: RE: Bill Draft

Thanks, Debora. I just sent this message over to Dick to take a look at as well. He may be in touch with you.

Erin

From: Kennedy, Debora
Sent: Monday, June 27, 2005 10:36 AM
To: Napralla, Erin
Subject: RE: Bill Draft

The second suggestion is fine. I disagree with the first, however; that suggestion seems to assume that a document under s. 157.06 (3) (c) 2. (which reduces a phone conversation to writing) is not a document of gift. I think it is a document of gift, because it fulfills the definition of that term. The definition of "document of gift" under s. 157.06 (1) (c) is ".... a card, a statement attached to or imprinted on a license under s. 343.175 (2) or on an identification card under s. 343.50 (3), a will OR ANOTHER WRITING used to make an anatomical gift." I think that to treat it otherwise may muddle the purpose that it serves.

-----Original Message-----

From: Napralla, Erin
Sent: Monday, June 27, 2005 7:41 AM
To: Kennedy, Debora
Subject: FW: Bill Draft

Debora,

How do these suggested changes from Dick look to you?

Erin

*Erin Napralla
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
608.266.5831
erin.napralla@legis.state.wi.us*

From: Sweet, Richard
Sent: Friday, June 24, 2005 11:37 AM
To: Napralla, Erin
Subject: RE: Bill Draft

Erin,

I just have a couple of minor suggestions:

On page 5, line 22, I would add "or document under s. 157.06(3)(c)2." after "gift". This covers situations in which the donation is made by a relative over the phone, for example. The phone conversation is reduced to writing and the draft, with this change, would require that this written document be provided to the person giving consent.

On page 6, line 6, I would add "skin or other" at the end of the line, for consistency with the rest of the subdivision.

Dick

-----Original Message-----

From: Napralla, Erin
Sent: Thursday, June 23, 2005 1:06 PM
To: Sweet, Richard
Subject: Bill Draft

Dick,

Let me know if I need to request any revisions. Thanks!!

Erin

<< File: 05-29351dn.pdf >> << File: 05-29351.pdf >>

Kennedy, Debora

From: Sweet, Richard
Sent: Monday, June 27, 2005 10:50 AM
To: Napralla, Erin
Cc: Kennedy, Debora
Subject: RE: Bill Draft

Erin,

I'm not so sure that an for anatomical gift that is done by relatives over the phone, the written document regarding the phone conversation constitutes a document of gift. Section 157.06(3)(c) gives the relatives 2 options: (1) they can execute a document of gift; or (2) they can use a recorded phone conversation, which is then reduced to writing. Since the first option is a document of gift, and the second option doesn't mention a document of gift, I think the new law would be clearer if it specifically mentions the written document that follows a donation over the phone.

In the alternative, the definition of "document of gift" in current law could be amended to specifically include written documents under s. 157.06(3)(c)2.

Dick

-----Original Message-----

From: Napralla, Erin
Sent: Monday, June 27, 2005 10:38 AM
To: Sweet, Richard
Subject: FW: Bill Draft

From: Kennedy, Debora
Sent: Monday, June 27, 2005 10:36 AM
To: Napralla, Erin
Subject: RE: Bill Draft

The second suggestion is fine. I disagree with the first, however; that suggestion seems to assume that a document under s. 157.06 (3) (c) 2. (which reduces a phone conversation to writing) is not a document of gift. I think it is a document of gift, because it fulfills the definition of that term. The definition of "document of gift" under s. 157.06 (1) (c) is ".... a card, a statement attached to or imprinted on a license under s. 343.175 (2) or on an identification card under s. 343.50 (3), a will OR ANOTHER WRITING used to make an anatomical gift." I think that to treat it otherwise may muddle the purpose that it serves.

-----Original Message-----

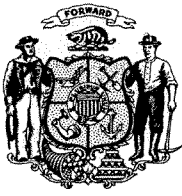
From: Napralla, Erin
Sent: Monday, June 27, 2005 7:41 AM
To: Kennedy, Debora
Subject: FW: Bill Draft

Debora,

How do these suggested changes from Dick look to you?

Erin

*Erin Napralla
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
608.266.5831*



Soon - 2nd edit 6/27
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2935/E 2

DAK:lmk:jf

↑
Keep

2005 BILL

REGENERATE

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

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

BILL

skin or other

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 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.

INSERT 2-7

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

9 157.06 (1) (eg) "For-profit corporation" means any corporation that is not
10 exempt from taxation under section 501 (c) (3) of the Internal Revenue Code.

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

BILL

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

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

3 157.06 (1) (km) "Tissue bank" means a corporation that recovers, processes, or
4 distributes tissue for transplantation into humans.

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

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

8 **SECTION 6.** 157.06 (3) (c) 2. of the statutes is amended to read:

9 9 157.06 (3) (c) 2. ~~Making~~ Subject to sub. (6m), if applicable, making a
10 telegraphic, recorded telephonic or other recorded message, or other form of
11 communication to another that is reduced to writing and signed by the recipient at
12 the time it is received.

13 **SECTION 7.** 157.06 (4) (am) 2. of the statutes is amended to read:

14 157.06 (4) (am) 2. The official has made a reasonable effort, taking into account
15 the useful life of the part of the body, to locate and examine the decedent's medical
16 records and, subject to sub. (6m), inform individuals listed in sub. (3) (a) of their
17 option to make, or object to making, an anatomical gift.

18 **SECTION 8.** 157.06 (5) (b) 1. of the statutes is amended to read:

19 157.06 (5) (b) 1. If at or near the time of death of a patient there is no medical
20 record or evidence obtained under par. (c) that the patient has made, revoked or
21 refused to make an anatomical gift, the hospital administrator or a representative
22 designated by the administrator shall discuss with an available individual, under
23 the priority established in sub. (3) (a), the option to make or refuse to make an
24 anatomical gift and request, subject to sub. (6m), that the individual make an
25 anatomical gift of all or a part of the decedent's body. Alternatively, the administrator

BILL

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

7 **SECTION 9.** 157.06 (5) (b) 2. of the statutes is amended to read:

8 157.06 (5) (b) 2. If the organ procurement organization is contacted under subd.
9 1., the organ procurement organization shall, in consultation with the attending
10 physician of the patient under subd. 1., determine if an anatomical gift is suitable,
11 based upon accepted medical standards, for a purpose specified in sub. (6) (a). If the
12 organ procurement organization and the patient's attending physician determine
13 that an anatomical gift is not so suitable, hospital personnel shall make a notation
14 to this effect in the patient's medical record. If the organ procurement organization
15 and the patient's attending physician determine that an anatomical gift is so
16 suitable, an organ procurement organization representative or a requester
17 designated by the organ procurement organization shall discuss with an available
18 individual, under the priority established in sub. (3) (a), the option to make or refuse
19 to make an anatomical gift and request, subject to sub. (6m), that the individual
20 make an anatomical gift of all or a part of the decedent's body.

21 **SECTION 10.** 157.06 (6m) of the statutes is created to read:

22 157.06 (6m) CONSENT FOR CERTAIN USES OF TISSUE; REQUIREMENTS. (a) A hospital,
23 organ procurement organization, tissue bank, coroner, or medical examiner that
24 provides a document of gift to a potential donor or to an individual under sub. (3) (a)

BILL

1 shall include in the document of gift specific requests for consent and opportunities
2 for refusal by the donor or individual for all of the following:

3 1. The recovery, processing, or distribution of donated skin, for purposes of
4 cosmetic surgery.

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

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

10 (b) The document of gift under par. (a) shall include, adjacent to each of the
11 requests for consent under par. (a) 1., 2., and 3., a line or space for the initials or
12 signature of the potential donor or individual under sub. (3) (a) and a space for the
13 donor's or individual's refusal. Failure of the donor or individual to initial or sign a
14 request for consent or a refusal for an activity under par. (a) 1., 2., or 3. is a refusal
15 to make an anatomical gift for that activity.

16 (c) If an individual under sub. (3) (a) makes an anatomical gift under sub. (3)
17 (c) 2. at the request of a hospital, organ procurement organization, tissue bank,
18 coroner, or medical examiner, the requester shall specifically request consent from
19 the individual for each of the activities under par. (a) 1., 2., and 3. and shall note the
20 request and response on the document received.

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

24 (e) 1. A donor or his or her estate or an individual under sub. (3) (a) may recover
25 civil damages of not less than \$1,000 nor more than \$10,000, plus court costs, from

BILL

1 a person who does not comply with the donor's or individual's refusal of consent
2 under par. (a) or (c).

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

6 3. For purposes of subds. 1. and 2., an individual or entity that receives donated
7 tissue is considered to have complied with a refusal of consent under par. (a) or (c)
8 if the individual or entity designates skin or other tissue that has been donated with
9 restrictions under par. (a) or (c) or states or records any refusal of consent in
10 documents that may be maintained with regard to the donated skin or other tissue.
11 After the individual or entity transfers the donated skin or other tissue to another
12 entity, along with the designation or documentation, the transferor's responsibility
13 for compliance with the refusal of consent ceases.

14 **SECTION 11. Initial applicability.**

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

17 **SECTION 12. Effective date.**

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

20 (END)

skin or other

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2935/2ins
DAK:lmk:jf

INSERT 2-7

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 **History:** 1971 c. 40 s. 93; 1971 c. 213 s. 5; 1977 c. 46, 124; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1981 c. 20, 290; 1983 a. 485; 1985 a. 286, 315; 1985 a. 316 s. 14;
Stats. 1985 s. 157.06; 1989 a. 105; 1989 a. 298 ss. 3, 10m, 11m; 1991 a. 32; 1995 a. 27 s. 9126 (19); 1997 a. 52, 206, 305; 1999 a. 83; 2001 a. 103.

end of insert 2-7

Northrop, Lori

From: Napralla, Erin
Sent: Wednesday, August 03, 2005 8:31 AM
To: LRB.Legal
Subject: Draft review: LRB 05-2935/2 Topic: Consent for anatomical gifts

It has been requested by <Napralla, Erin> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2935/2 Topic: Consent for anatomical gifts

TELEPHONE DRAFTING INSTRUCTIONS

Drafting instructions received by Debora Kennedy.

DATE:

8/8/05

CONVERSATION
WITH:

Erin

OF:

OH's office

TELEPHONE NO:

6-5831

REGARDING LRB #
OR DRAFT TOPIC:

-2935/2

INSTRUCTIONS:

Redraft:

Clarify, in s. 157.06 (6m)(b), that the
first space (for initials or signature) is
for consent.



(TUES by 1:00, please)
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2935/2 3

DAK:lmk:rs

↑
Keep

2005 BILL

Reben

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.

BILL

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:

BILL

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.

BILL**SECTION 9**

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

BILL

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 line or space for the initials or
19 signature of the potential donor or individual under sub. (3) (a) and a space for the
20 donor's or individual's refusal. Failure of the donor or individual to initial or sign a
21 request for consent or a refusal for an activity under par. (a) 1., 2., or 3. is a refusal
22 to make an anatomical 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

to indicate ^{consent} consent

BILL**SECTION 11**

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 subds. 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.

21 **SECTION 12. Initial applicability.**

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

24 **SECTION 13. Effective date.**

BILL

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

3 (END)

Kennedy, Debora

From: Napralla, Erin
Sent: Tuesday, August 09, 2005 10:03 AM
To: Kennedy, Debora
Subject: FW:

Debora,

I just received this from Dick Sweet. Please review and let me know what you think. Could this work?

Erin

*Erin Napralla
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
608.266.5831
erin.napralla@legis.state.wi.us*

From: Sweet, Richard
Sent: Tuesday, August 09, 2005 9:59 AM
To: Napralla, Erin
Subject: RE:

I think you'd want initials or signature for a refusal also. How about the following, starting on line 18 after the last comma--"a space for the donor's or individual's consent or refusal and a line or space for the donor's or individual's initials or signature.". The second sentence can stay as is.

Dick

8/9/05: DAK called Erin: Change is fine to make.



TODAY
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2935/4

DAK:lmk:ff

↑
Keep

2005 ASSEMBLY BILL

Reem

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.

ASSEMBLY BILL**SECTION 9**

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 line or space for the initials or~~
19 ~~signature of the potential donor or individual under sub. (3) (a) to indicate consent,~~
20 ~~and~~ consent or ~~a space for the donor's or individual's refusal.~~ Failure of the donor or individual
21 to initial or sign a request for consent or a refusal for an activity under par. (a) 1., 2.,
22 or 3. is a refusal to make an anatomical 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

*and a line or space for
the donor's or individual's
initials or signature ✓*

consent or ✓

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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 subds. 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

