

2005 Assembly Bill 830

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2005 WISCONSIN ACT 230

AN ACT *to repeal* 157.06 (11) and 157.06 (12); *to amend* 157.06 (2) (j), 157.06 (4) (title), 157.06 (4) (am) (intro.), 157.06 (4) (b) and 157.06 (5) (bm); *to repeal and recreate* 157.06 (title); and *to create* 157.06 (4m), 157.06 (4r) and 157.06 (9m) of the statutes; **relating to:** anatomical gifts and the powers and duties of coroners and medical examiners, granting rule-making authority, and providing an exemption from emergency rule procedures.

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

SECTION 1. 157.06 (title) of the statutes is repealed and recreated to read:

157.06 (title) Anatomical gifts.

SECTION 2. 157.06 (2) (j) of the statutes is amended to read:

157.06 (2) (j) In the absence of contrary indications by the donor, an anatomical gift of a part of a human body is neither a refusal to give other parts of the body nor a limitation on an anatomical gift under sub. (3) or on a removal or release of other parts of the body under sub. (4), (4m), or (4r).

SECTION 3. 157.06 (4) (title) of the statutes is amended to read:

157.06 (4) (title) ~~NOTIFICATION AND AUTHORIZATION AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; NO EVIDENCE OF ANATOMICAL GIFT.~~

SECTION 4. 157.06 (4) (am) (intro.) of the statutes is amended to read:

157.06 (4) (am) (intro.) The coroner or medical examiner may release and permit the removal of a part from, a decedent specified in par. (ag) within that official's custody, for transplantation or therapy, including to

a tissue bank under the requirements of sub. (4r), if all of the following apply:

SECTION 5. 157.06 (4) (b) of the statutes is amended to read:

157.06 (4) (b) ~~An official releasing, and permitting A coroner or medical examiner who releases, and permits~~ the removal of a part of, a human body under this subsection shall maintain a permanent record of the name of the decedent, the name of the person making the request, the date and purpose of the request, the part of the body requested, and the name of the person to whom it was released.

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

157.06 (4m) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; POTENTIAL DONATIONS OF ORGANS AND TISSUE. (a) Subject to par. (b), for a decedent who meets the criteria for a determination of death under s. 146.71, who is a donor or of whom an anatomical gift has been made under sub. (3), and who is within the jurisdiction of a coroner or medical examiner under ch. 979, any vascularized organ that is an anatomical gift may be removed by a physician, within a time period compatible with preservation of the organ for purposes of transplantation, if all of the following take place:

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

1. Immediately after the hospital in which the donor, potential decedent, or decedent is located contacts the organ procurement organization designated for the region of which the hospital is a part concerning the potential donation, the organ procurement organization shall, by oral conversation, provide notice to the coroner or medical examiner or his or her designee of the referral of the donor, potential decedent, or decedent and shall provide notice of the referral to the district attorney or his or her designee.

2. The coroner or medical examiner or his or her designee has the opportunity to be present during the scheduled removal of the vascularized organ if, in the judgment of the coroner, medical examiner, or designee, the organ may be necessary in determining the cause of death.

(b) If, in the judgment of the coroner, medical examiner, or designee specified in par. (a) the vascularized organ may be necessary in determining the cause of death, the coroner, medical examiner, or designee may order a biopsy of the vascularized organ or, if the coroner, medical examiner, or designee is present during the scheduled removal, he or she may deny removal of the vascularized organ. If denial of removal is a possibility, the organ procurement organization shall make a good-faith effort to consult with a forensic pathologist designated by the coroner, medical examiner, or designee as to the pathologist's opinion concerning the necessity of the vascularized organ in determining the cause of death. If the biopsy is ordered or the removal is denied, the coroner, medical examiner, or designee shall specify, in writing as part of any death report required under ch. 979, any reasons for determining that the vascularized organ may be involved in the cause of death.

(c) For a decedent specified under par. (a), as authorized under the requirements of this section by the coroner, medical examiner, or designee with jurisdiction over the decedent, any part other than a vascularized organ that is an anatomical gift may be removed by a physician and any part that is tissue or bone may be removed by a technician or tissue bank employee, within a time period compatible with preservation of the part for purposes of transplantation.

(d) A physician, technician, or tissue bank employee who removes cardiovascular tissue from a decedent under this subsection shall, upon request of the coroner or medical examiner, file with the coroner or medical examiner with jurisdiction over the decedent a report detailing the condition of the cardiovascular tissue and its relationship to the cause of death. The report may include a biopsy or medically approved sample, if available, from the part.

(e) 1. A physician who removes an organ from a decedent under this subsection shall complete a form, as specified in sub. (9m) (a).

2. A physician, technician, or tissue bank employee who removes tissue, other than cardiovascular tissue, from a decedent under this subsection shall complete a form, as specified in sub. (9m) (b).

3. After completing a form under this paragraph, the physician, technician, or tissue bank employee shall transmit the form to the coroner or medical examiner with jurisdiction over the decedent.

SECTION 7. 157.06 (4r) of the statutes is created to read:

157.06 (4r) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; TISSUE BANKS. (a) 1. If a decedent is within the custody of a coroner or medical examiner, and the death occurred in a hospital, any release of the decedent for potential donation of tissue shall be to the tissue bank with which the hospital has an agreement under 42 CFR 482.45 (a) (2). However, if such a tissue bank is unwilling to receive the tissue donation, the tissue bank shall so notify the coroner or medical examiner.

2. Upon receipt of a notification under subd. 1., the coroner or medical examiner may notify any other tissue bank with which the coroner or medical examiner has an agreement under par. (b) of the availability of the decedent as a potential tissue donor.

3. Upon receipt of a notification under subd. 2., the tissue bank so notified, if willing to receive the tissue donation, shall contact an available individual, under the priority established in sub. (3) (a), to request that the individual make an anatomical gift of all or a part of the decedent's tissue.

4. If the coroner or medical examiner informs the hospital that subds. 2. and 3. apply and that consent has been given for an anatomical gift, the hospital shall transfer the decedent to the coroner or medical examiner.

(b) When a decedent is within the custody of a coroner or medical examiner, the death occurred outside a hospital or the decedent was transferred to the coroner or medical examiner under par. (a) 4., and the coroner or medical examiner refers the decedent as a potential tissue donor, any such referral shall be made under the following conditions:

1. Subject to subds. 2., 3., and 4., the coroner or medical examiner, after considering a tissue bank's history, services, traditional referral patterns, geographic service area, and tissue distribution record and any other criteria required for consideration by the corporation counsel of the applicable county, enters into a written, general referral agreement with one or more tissue banks to which the coroner or medical examiner shall refer decedents for potential donation of tissue.

2. Any agreement under subd. 1. is subject to review and approval by all of the the following:

a. The corporation counsel of the applicable county.

b. The county board of the applicable county. Within 60 days after any approval by the corporation counsel and

transmittal of the agreement to the county board, the county board may approve or disapprove the agreement. If the county board takes no action, the agreement is approved.

3. A tissue bank under this paragraph is accredited by the American Association of Tissue Banks or audited at least once every 2 years by an organization that is accredited by the American Association of Tissue Banks.

4. All of the following applies to an agreement by a coroner or medical examiner with one or more tissue banks to which the coroner or medical examiner refers decedents for potential donation of tissue:

a. Any such agreement that is entered into after the effective date of this subdivision unit [revisor inserts date], shall conform to the requirements of subds. 1. to 3.

b. Any such agreement that exists on the effective date of this subdivision unit [revisor inserts date], shall conform to the requirements of subds. 1. to 3. by October 1, 2007, unless the agreement expires before that date and is not renegotiated or renewed under subd. 4. a.

SECTION 8. 157.06 (5) (bm) of the statutes is amended to read:

157.06 (5) (bm) If at or near the time of death of a patient a hospital knows that an anatomical gift of all or a part of the patient's body has been made under sub. (3) (a), that a release and removal of a part of the patient's body has been permitted under sub. (4) or (4m) or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital. If a donee is neither named nor known to the hospital, the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part of the body of the patient or individual.

SECTION 9. 157.06 (9m) of the statutes is created to read:

157.06 (9m) FORMS FOR REMOVAL OF ORGANS AND CERTAIN TISSUES; RULES. The department of health and

family services shall promulgate rules prescribing all of the following:

(a) A form for removal of organs for use under sub. (4m) (e) 1. and 3.

(b) A form for removal of tissue, other than cardiovascular tissue, for use under sub. (4m) (e) 2. and 3.

SECTION 10. 157.06 (11) of the statutes is repealed.

SECTION 11. 157.06 (12) of the statutes is repealed.

SECTION 12. Nonstatutory provisions.

(1) ORGAN AND TISSUE REMOVAL FORMS; ADVISORY COMMITTEE; EMERGENCY RULES.

(a) The secretary of health and family services shall appoint an advisory committee under section 15.04 (1) (c) of the statutes that shall include coroners, forensic pathologists, medical examiners, organ procurement organization personnel, tissue banks, and district attorneys, to assist the department of health and family services in prescribing, by rule, a form for removal of organs and a form for removal of tissue, other than cardiovascular tissue, for use under section 157.06 (4m) (e) of the statutes, as created by this act.

(b) After consulting with the advisory committee under paragraph (a), by the first day of the 4th month beginning after the effective date of this subsection, the department of health and family services shall, using the procedure under section 227.24 of the statutes, promulgate the rules required under section 157.06 (9m) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under section 157.06 (9m) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.