



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0425/2
DAK:lmk:jf

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 830**

January 13, 2006 – Offered by Representative WIECKERT.

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

Analysis by the Legislative Reference Bureau

Currently, an individual who is at least 18 years of age may make an anatomical gift (donation of all or part of his or her body to take effect at the time or after he or she irreversibly ceases circulatory and respiratory functions or all functions of the brain). Also, certain members of a decedent's family or his or her health care agent under a power of attorney for health care may, under an order of priority, make an anatomical gift of all or a part of the decedent's body. If a decedent is within the custody of a coroner or medical examiner and there is no evidence that the decedent made or refused to make an anatomical gift, under certain circumstances the coroner or medical examiner may release and permit the removal of a part from the decedent's body for use in transplantation or therapy.

This substitute amendment creates additional requirements related to removal of a body part from a decedent who is within the jurisdiction of a coroner or medical

examiner. If the decedent has made an anatomical gift or his or her family or health care agent has made an anatomical gift of all or part of the decedent's body, a physician may remove a vascularized organ (a heart, lung, liver, pancreas, kidney, intestine, or other organ that requires the continuous circulation of blood to remain useful for purposes of transplantation) within a time period in which the organ may be preserved for purposes of transplantation if (1) immediately after the hospital in which the donor, potential decedent, or decedent is located contacts the organ procurement organization concerning the potential donation, the organ procurement organization provides notice, by oral conversation, of the referral of the potential donor to the coroner or medical examiner or his or her designee and provides notice of the referral to the district attorney or his or her designee; and (2) the coroner or medical examiner or his or her designee has the opportunity to be present during the vascularized organ's scheduled removal if in the judgment of the coroner, medical examiner, or designee the organ may be necessary in determining the cause of death. However, also if, in the judgment of the coroner, medical examiner, or designee, the 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 he or she is present during the scheduled removal, may deny removal. 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 or medical examiner as to the pathologist's opinion concerning the necessity of the vascularized organ in determining the cause of death. If a biopsy is ordered or removal is denied, the coroner, medical examiner, or designee must specify any reason in writing as part of the death report. As authorized by the coroner, medical examiner, or designee with jurisdiction over the decedent, parts or all of the decedent's body that are anatomical gifts, other than vascularized organs, may be removed by a physician, any part that is tissue or bone may be removed by a technician, and tissue may be removed by a tissue bank employee. A physician who removes an organ from a decedent must complete a form, and a physician, technician, or tissue bank employee who removes tissue, other than cardiovascular tissue, from a decedent, must complete a form. The completed forms must be transmitted to the coroner or medical examiner. The secretary of health and family services must appoint an advisory committee to assist DHFS in prescribing, by rule, these forms. A physician, technician, or tissue bank employee who removes cardiovascular tissue from a decedent must, upon request by a coroner or medical examiner, file a report with the coroner or medical examiner.

The substitute amendment also requires, for a decedent who is within the custody of a coroner or medical examiner and whose death occurred *in* a hospital, that any release of the decedent for potential use in donating tissue be to the tissue bank with which the hospital has an agreement, as required under federal law. However, if that tissue bank is unwilling to receive the release, the tissue bank must notify the coroner or medical examiner, who then may notify concerning the availability of the tissue any other tissue bank with which the coroner or medical examiner has an agreement. A tissue bank that is so notified, if it is willing to receive the release, must notify an available member of the decedent's family or the

decedent's health care agent, under the order of priority, to request that the member or agent make an anatomical gift of all or part of the decedent's tissue. If the coroner or medical examiner informs the hospital that these circumstances exist and that the gift has been made, the hospital must transfer the decedent to the coroner or medical examiner, who may remove the decedent's body from the hospital in which the body is located.

If a decedent is within the custody of a coroner or medical examiner, the death occurred *outside* a hospital or the decedent's body was removed from a hospital, and the coroner or medical examiner refers the decedent as a potential tissue donor, the substitute amendment requires that any such referral be made to one or more tissue banks with which the coroner or medical examiner has a written general referral agreement. The agreement may be made only after the coroner or medical examiner has considered a number of factors concerning the tissue bank, and the agreement is subject to review and approval by the corporation counsel of the applicable county and by the applicable county board, and any tissue bank to which referral is made must be accredited by the American Association of Tissue Banks or audited at least once every two years by an organization that is accredited by the American Association of Tissue Banks. Any agreement entered into after the date on which the bill becomes an act must conform to these requirements; and any existing agreement must conform to the requirements by October 1, 2007.

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

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

2 **157.06 (title) Anatomical gifts.**

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

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

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

9 157.06 (4) (title) ~~NOTIFICATION AND AUTHORIZATION~~ AUTHORIZATION BY CORONER
10 OR MEDICAL EXAMINER; NO EVIDENCE OF ANATOMICAL GIFT.

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

1 157.06 (4) (am) (intro.) The coroner or medical examiner may release and
2 permit the removal of a part from, a decedent specified in par. (ag) within that
3 official's custody, for transplantation or therapy, including to a tissue bank under the
4 requirements of sub. (4r), if all of the following apply:

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

6 157.06 (4) (b) ~~An official releasing, and permitting~~ A coroner or medical
7 examiner who releases, and permits the removal of a part of, a human body under
8 this subsection shall maintain a permanent record of the name of the decedent, the
9 name of the person making the request, the date and purpose of the request, the part
10 of the body requested, and the name of the person to whom it was released.

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

12 157.06 (4m) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; POTENTIAL
13 DONATIONS OF ORGANS AND TISSUE. (a) Subject to par. (b), for a decedent who meets the
14 criteria for a determination of death under s. 146.71, who is a donor or of whom an
15 anatomical gift has been made under sub. (3), and who is within the jurisdiction of
16 a coroner or medical examiner under ch. 979, any vascularized organ that is an
17 anatomical gift may be removed by a physician, within a time period compatible with
18 preservation of the organ for purposes of transplantation, if all of the following take
19 place:

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

1 decedent, or decedent and shall provide notice of the referral to the district attorney
2 or his or her designee.

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

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

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

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

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

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

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

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

16 **157.06 (4r) AUTHORIZATION BY CORONER OR MEDICAL EXAMINER; TISSUE BANKS.** (a)

17 1. If a decedent is within the custody of a coroner or medical examiner, and the death
18 occurred in a hospital, any release of the decedent for potential donation of tissue
19 shall be to the tissue bank with which the hospital has an agreement under 42 CFR
20 482.45 (a) (2). However, if such a tissue bank is unwilling to receive the tissue
21 donation, the tissue bank shall so notify the coroner or medical examiner.

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

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

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

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

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

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

22 a. The corporation counsel of the applicable county.

23 b. The county board of the applicable county. Within 60 days after any approval
24 by the corporation counsel and transmittal of the agreement to the county board, the

1 county board may approve or disapprove the agreement. If the county board takes
2 no action, the agreement is approved.

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

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

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

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

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

17 157.06 (5) (bm) If at or near the time of death of a patient a hospital knows that
18 an anatomical gift of all or a part of the patient's body has been made under sub. (3)
19 (a), that a release and removal of a part of the patient's body has been permitted
20 under sub. (4) or (4m) or that a patient or an individual identified as in transit to the
21 hospital is a donor, the hospital shall notify the donee if one is named and known to
22 the hospital. If a donee is neither named nor known to the hospital, the hospital shall
23 notify an appropriate procurement organization. The hospital shall cooperate in the
24 implementation of the anatomical gift or release and removal of a part of the body
25 of the patient or individual.

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

2 157.06 **(9m)** FORMS FOR REMOVAL OF ORGANS AND CERTAIN TISSUES; RULES. The
3 department of health and family services shall promulgate rules prescribing all of
4 the following:

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

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

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

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

10 **SECTION 12. Nonstatutory provisions.**

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

12 (a) The secretary of health and family services shall appoint an advisory
13 committee under section 15.04 (1) (c) of the statutes that shall include coroners,
14 forensic pathologists, medical examiners, organ procurement organization
15 personnel, tissue banks, and district attorneys, to assist the department of health
16 and family services in prescribing, by rule, a form for removal of organs and a form
17 for removal of tissue, other than cardiovascular tissue, for use under section 157.06
18 (4m) (e) of the statutes, as created by this act.

19 (b) After consulting with the advisory committee under paragraph (a), by the
20 first day of the 4th month beginning after the effective date of this subsection, the
21 department of health and family services shall, using the procedure under section
22 227.24 of the statutes, promulgate the rules required under section 157.06 (9m) of
23 the statutes, as created by this act, for the period before the effective date of the
24 permanent rules promulgated under section 157.06 (9m) of the statutes, as created
25 by this act, but not to exceed the period authorized under section 227.24 (1) (c) and

1 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the
2 statutes, the department is not required to provide evidence that promulgating a rule
3 under this paragraph as an emergency rule is necessary for the preservation of the
4 public peace, health, safety, or welfare and is not required to provide a finding of
5 emergency for a rule promulgated under this paragraph.

6 (END)