

State of Misconsin 2007 - 2008 LEGISLATURE

LRB-0494/1 DAK:jld:jf

# 2007 SENATE BILL 62

February 21, 2007 – Introduced by Senators ROESSLER, OLSEN and SCHULTZ, cosponsored by Representatives TOWNSEND, HINES, STONE, A. OTT, F. LASEE, MOLEPSKE, BERCEAU, VOS, BALLWEG and ALBERS. Referred to Committee on Health and Human Services.

AN ACT to repeal 157.06 (2) (d); to amend 154.03 (2) (form), 157.06 (2) (i) (intro.), 157.06 (6) (b) and 157.06 (8) (b); and to create 154.06, 157.06 (2) (f) 7. and 157.06 (2) (i) 2m. of the statutes; relating to: creating the option to make an anatomical gift as part of a living will and eliminating the designation of a specific physician to perform transplantation.

#### Analysis by the Legislative Reference Bureau

Under current law, a person who is at least 18 years old may donate all or part of his or her body after death (make an anatomical gift) by signing a document of gift, together with two witnesses, or by signing the reverse side of a regular driver's license, a document that may be attached to a commercial driver's license, or an identification card that is issued by the Department of Transportation. In addition, a person may specify in a power of attorney for health care instrument that he or she wishes to make an anatomical gift. A person may also refuse to make an anatomical gift; limit an anatomical gift to specific purposes, including particular donees; require that a particular physician carry out the appropriate procedures; amend an anatomical gift; or revoke an anatomical gift. Lastly, a person may revoke or amend a refusal to make an anatomical gift. Any anatomical gift made by the donor that is not revoked by the donor before death is irrevocable and does not require the consent of anyone after the donor's death.

Also under current law, a person may execute a declaration to physicians (commonly known as a living will), which authorizes a physician to withhold or

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withdraw life-sustaining procedures or feeding tubes from the person when the person is in a terminal condition or is in a persistent vegetative state.

This bill authorizes a person who executes a living will to make an anatomical gift, amend such a gift, revoke an anatomical gift, or refuse to make an anatomical gift, as part of the living will. The bill permits the declarant of the living will to donate all of his or her organs, tissues, and eyes or to donate only specific organs, tissues, or eyes. Further, the bill permits the living will declarant to donate to a specific donee or, if that individual is not able to be a transplant recipient, to donate to any suitable person. Lastly, the bill permits the living will declarant to donate his or her organs, tissues, or eyes to a recovery agency for research and education if his or her organs, tissues, or eyes are unsuitable for transplantation. The bill specifies that failure to make an indication of desire or refusal to make an anatomical gift does not create a presumption about the declarant's intent with regard to the matter.

The bill eliminates the provision, under the anatomical gift laws, that permits a person to require that a particular physician carry out the procedures to make an anatomical gift.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

**SECTION 1.** 154.03 (2) (form) of the statutes is amended to read:

2 154.03 (2) (form)

3

4

DECLARATION TO PHYSICIANS

(WISCONSIN LIVING WILL)

5 I,...., being of sound mind, voluntarily state my desire that my dying not be 6 prolonged under the circumstances specified in this document. Under those 7 circumstances, I direct that I be permitted to die naturally. If I am unable to give 8 directions regarding the use of life-sustaining procedures or feeding tubes, I intend 9 that my family and physician honor this document as the final expression of my legal 10 right to refuse medical or surgical treatment.

- 11 In addition, I may, by this document, specify my wishes with respect to making
- 12 <u>an anatomical gift upon my death.</u>

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1	1. If I have a TERMINAL CONDITION, as determined by 2 physicians who
2	have personally examined me, I do not want my dying to be artificially prolonged and
3	I do not want life-sustaining procedures to be used. In addition, the following are
4	my directions regarding the use of feeding tubes:
5	YES, I want feeding tubes used if I have a terminal condition.
6	NO, I do not want feeding tubes used if I have a terminal condition.
7	If you have not checked either box, feeding tubes will be used.
8	2. If I am in a PERSISTENT VEGETATIVE STATE, as determined by $2$
9	physicians who have personally examined me, the following are my directions
10	regarding the use of life-sustaining procedures:
11	YES, I want life-sustaining procedures used if I am in a persistent
12	vegetative state.
13	NO, I do not want life-sustaining procedures used if I am in a persistent
14	vegetative state.
15	If you have not checked either box, life-sustaining procedures will be used.
16	3. If I am in a PERSISTENT VEGETATIVE STATE, as determined by $2$
17	physicians who have personally examined me, the following are my directions
18	regarding the use of feeding tubes:
19	YES, I want feeding tubes used if I am in a persistent vegetative state.
20	NO, I do not want feeding tubes used if I am in a persistent vegetative state.
21	If you have not checked either box, feeding tubes will be used.
22	If you are interested in more information about the significant terms used in
23	this document, see section 154.01 of the Wisconsin Statutes or the information
24	accompanying this document.

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1	ATTENTION: You and the 2 witnesses m	nust sign the document at the same
2	time.	
3	Signed	Date
4	Address	Date of birth
5	I believe that the person signing this docun	nent is of sound mind. I am an adult
6	and am not related to the person signing thi	is document by blood, marriage or
7	adoption. I am not entitled to and do not have a	claim on any portion of the person's
8	estate and am not otherwise restricted by law f	rom being a witness.
9	Witness signature	Date signed
10	Print name	
11	Witness signature	Date signed
12	Print name	
13	DIRECTIVES TO ATTENDI	NG PHYSICIAN
14	1. This document authorizes the withhold	ing or withdrawal of life-sustaining
15	procedures or of feeding tubes when 2 physici	ans, one of whom is the attending
16	physician, have personally examined and certif	ied in writing that the patient has a
17	terminal condition or is in a persistent vegetati	ve state.
18	2. The choices in this document were made	le by a competent adult. Under the
19	law, the patient's stated desires must be followed	l unless you believe that withholding
20	or withdrawing life-sustaining procedures or fe	eding tubes would cause the patient
21	pain or reduced comfort and that the pain or disc	comfort cannot be alleviated through
		-
22	pain relief measures. If the patient's state	

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1	3. If you feel that you cannot comply with this document, you must make a good
2	faith attempt to transfer the patient to another physician who will comply. Refusal
3	or failure to make a good faith attempt to do so constitutes unprofessional conduct.
4	4. If you know that the patient is pregnant, this document has no effect during
5	her pregnancy.
6	* * * *
7	The person making this living will may use the following space to record the
8	names of those individuals and health care providers to whom he or she has given
9	copies of this document:
10	
11	
12	
13	* * * * *
14	ANATOMICAL GIFTS (optional)
15	At my death, the following are my directions regarding donation of my organs,
16	tissues, or eyes:
17	YES, I want to donate all of my organs, tissues, and eyes as an anatomical
18	<u>gift.</u>
19	OR
20	YES, I want to donate only the following specific organs or tissues of my body
21	<u>or my eyes as an anatomical gift:</u>
22	Organs for transplantation (indicate yes or no):
23	<u>1. Heart:</u>
24	2. Liver:
25	<u>3. Lungs:</u>

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1	4. Kidneys:
2	<u>5. Pancreas:</u>
3	<u>6. Intestine:</u>
4	7. All organs listed:
5	<u>Tissues for transplantation (indicate yes or no):</u>
6	<u>1. Heart valves:</u>
7	<u>2. Skin:</u>
8	<u>3. Bone:</u>
9	4. Connective tissue:
10	<u>5. Saphenous vein:</u>
11	<u>6. Femoral vein:</u>
12	7. All tissues listed:
13	Eyes for transplantation (indicate yes or no for both eyes or yes or no for specific
14	<u>eyes):</u>
15	<u>If I have signified "YES" to any of the options above, in addition, I may, but do</u>
16	not have to, indicate any or all of the following:
17	1. I want to donate my (list of organs, tissues, or eyes) to: (name of the
18	<u>donee), but, if that person is not able to be a transplant recipient, then I donate to</u>
19	anyone for whom the anatomical gift is suitable.
20	2. I want to donate any or all of my organs, tissues, or eyes for the purpose of
21	transplantation, but, if transplantation is not able to occur, or my organs, tissues, or
22	eyes are unsuitable for transplantation, I want to donate any or all of my organs,
23	tissues, or eyes to a recovery agency for research and education.
24	<u>OR</u>

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1	NO, I do not want to donate any or all of my organs, tissues, or eyes as an
2	anatomical gift.
3	If I do not check any of the lines immediately above, no presumption is created
4	about my desire to make or refuse to make an anatomical gift.
5	Signed Date
6	<b>SECTION 2.</b> 154.06 of the statutes is created to read:
7	154.06 Organ donation; amendment; revocation; refusal. (1) $A$
8	declarant may make an anatomical gift of any or all of his or her organs, tissues, or
9	eyes by indicating his or her intent in the space provided on the declaration. A
10	declaration that so indicates the declarant's intent serves as a document of gift under
11	s. 157.06 (2) (b).
12	(2) A declarant who has made an anatomical gift as specified in sub. (1) may
13	amend his or her gift by adding to or changing the donor authorization in the space
14	provided on the declaration or by performing any of the procedures specified in s.
15	157.06 (2) (f) 1. to 4.
16	(3) A declarant who has made an anatomical gift as specified in sub. (1) may
17	revoke his or her gift by crossing out the donor authorization in the space provided
18	on the declaration or by performing any of the procedures specified in s. $157.06(2)$
19	(f) 1. to 4.
20	(4) A declarant may refuse to make an anatomical gift of any or all of his or her
21	organs, tissues, or eyes by indicating his or her intent in the space provided on the
22	declaration. A declaration that so indicates the declarant's intent serves as a
23	document of refusal to make an anatomical gift under s. 157.06 (2) (i).
24	(5) Nothing in this section requires a declarant to make, amend, or refuse to
25	make an anatomical gift by means of a declaration or otherwise limits a declarant

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1	from making, amending, or refusing to make an anatomical gift under alternative
2	procedures specified in s. 157.06.
3	SECTION 3. 157.06 (2) (d) of the statutes is repealed.
4	<b>SECTION 4.</b> 157.06 (2) (f) 7. of the statutes is created to read:
5	157.06 (2) (f) 7. For a declarant who executes a living will, crossing out or
6	amending the donor authorization or refusal in the space provided on the declaration
7	as prescribed in s. 154.06 $(2)$ and $(4)$ or revoking the declaration as prescribed in s.
8	154.06 (3).
9	SECTION 5. 157.06 (2) (i) (intro.) of the statutes is amended to read:
10	157.06 (2) (i) (intro.) An individual may refuse to make an anatomical gift of
11	the individual's body or part of his or her body any or all of his or her organs, tissues,
12	<u>or eyes</u> by doing any of the following:
13	SECTION 6. 157.06 (2) (i) 2m. of the statutes is created to read:
14	157.06 (2) (i) 2m. For a declarant who executes a living will, making a
15	statement of refusal in the space provided in the declaration as prescribed in s.
16	154.06 (4).
17	<b>SECTION 7.</b> 157.06 (6) (b) of the statutes is amended to read:
18	157.06 (6) (b) A donor may make an anatomical gift to a designated donee or
19	without designating a donee. If a donee is not designated or if the donee is not
20	<del>available or rejects <u>designated but</u> the anatomical gift<del>, any hospital <u>is not able to be</u></del></del>
21	accepted by the donee, anyone for whom the anatomical gift is suitable may accept
22	the anatomical gift.
23	<b>SECTION 8.</b> 157.06 (8) (b) of the statutes is amended to read:
24	157.06 (8) (b) The time of death shall be determined by a physician who attends

25 the donor at death or, if none, the physician who certifies the death. Neither the

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physician who attends the donor at death nor the physician who determines the time
of death may participate in the procedures for removing or transplanting a part of
the donor's body unless the document of gift designates a particular physician under
sub. (2) (d).

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(END)