

PART V
ANATOMICAL GIFTS
(ss. 765.510-765.547)

PART V
ANATOMICAL GIFTS

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- 765.510 Legislative declaration.—Because of the rapid medical progress in the fields of tissue and organ preservation, transplantation of tissue, and tissue culture, and because it is in the public interest to aid the medical developments in these

fields, the Legislature in enacting this part intends to encourage and aid the development of reconstructive medicine and surgery and the development of medical research by facilitating premortem and postmortem authorizations for donations of tissue and organs. It is the purpose of this part to regulate the gift of a body or parts of a body, the gift to be made after the death of a donor.

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 84-264; s. 60, ch. 2001-226.

Note.—Created from former s. 736.21; s. 732.910.

765.511 Definitions.—As used in this part, the term:

- (1) “Agency” means the Agency for Health Care Administration.
- (2) “Anatomical gift” or “gift” means a donation of all or part of a human body to take effect after the donor’s death and to be used for transplantation, therapy, research, or education.
- (3) “Bank” or “storage facility” means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or body parts.
- (4) “Death” means the absence of life as determined, in accordance with currently accepted medical standards, by the irreversible cessation of all respiration and circulatory function, or as determined, in accordance with s. 382.009, by the irreversible cessation of the functions of the entire brain, including the brain stem.
- (5) “Decedent” means a deceased individual whose body or body parts may be, or are, the source of an anatomical gift.
- (6) “Department” means the Department of Highway Safety and Motor Vehicles.
- (7) “Disinterested witness” means a witness other than a person listed in s. 765.512(3) or other family member.
- (8) “Document of gift” means any of the documents or mechanisms used in making an anatomical gift under s. 765.514.
- (9) “Donor” means an individual who makes an anatomical gift of all or part of his or her body.
- (10) “Donor registry” means a database that contains records of anatomical gifts and amendments to, or revocations of, such gifts.
- (11) “Eye bank” means an entity that is accredited by the Eye Bank Association of America or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human eye tissue.
- (12) “Guardian” means a person appointed pursuant to chapter 744. The term does not include a guardian ad litem.
- (13) “Hospital” means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States Government or a state, or a subdivision thereof, although not required to be licensed under state laws.
- (14) “Identification card” means an official identification card issued by a governmental entity, state agency, or subdivision thereof.

(15) “Organ procurement organization” means an entity that is designated as an organ procurement organization by the Secretary of the United States Department of Health and Human Services and that engages in the retrieval, screening, testing, processing, storage, or distribution of human organs.

(16) “Part of the body” or “body part” means an organ, eye, or tissue of a human being. The term does not include the whole body.

(17) “Physician” or “surgeon” means a physician or surgeon licensed to practice under chapter 458 or chapter 459 or similar laws of any state. “Surgeon” includes dental or oral surgeon.

(18) “Procurement” means any retrieval, recovery, processing, storage, or distribution of human organs or tissues for transplantation, therapy, research, or education.

(19) “Procurement organization” means an organ procurement organization, eye bank, or tissue bank.

(20) “Reasonably available” means able to be contacted by a procurement organization in a timely manner without undue effort, and willing and able to act in a manner consistent with existing medical protocols necessary for the making of an anatomical gift.

(21) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Sign” or “signed” means, with the present intent to authenticate or adopt a record, to execute or adopt a tangible symbol, or attach to or logically associate an electronic symbol, sound, or process with the record.

(23) “Tissue bank” means an entity that is accredited by the American Association of Tissue Banks or otherwise regulated under federal or state law to engage in the retrieval, screening, testing, processing, storage, or distribution of human tissue. History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 973, ch. 97-102; s. 5, ch. 98-68; s. 61, ch. 2001-226; s. 1, ch. 2009-218.

Note.—Created from former s. 736.22; s. 732.911.

765.512 Persons who may make an anatomical gift.—

(1) Any person who may make a will may make an anatomical gift of his or her body.

(a) If the decedent makes an anatomical gift by one of the methods listed in s. 765.514(1), and in the absence of actual notice of contrary indications by the decedent, the document or entry in the donor registry is legally sufficient evidence of the decedent’s informed consent to donate an anatomical gift.

(b) An anatomical gift made by a qualified donor and not revoked by the donor, as provided in s. 765.516, is irrevocable after the donor’s death. A family member, guardian, representative ad litem, or health care surrogate may not modify, deny, or prevent a donor’s wish or intent to make an anatomical gift after the donor’s death.

(2) A health care surrogate designated by the decedent pursuant to part II of this chapter may give all or any part of the decedent's body for any purpose specified in s. 765.513 absent actual notice of contrary indications by the decedent.

(3) If the decedent has not made an anatomical gift or designated a health surrogate, a member of one of the classes of persons listed below, in the order of priority listed and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of a prior class, may give all or any part of the decedent's body for any purpose specified in s. 765.513:

- (a) The spouse of the decedent;
- (b) An adult son or daughter of the decedent;
- (c) Either parent of the decedent;
- (d) An adult brother or sister of the decedent;
- (e) An adult grandchild of the decedent;
- (f) A grandparent of the decedent;
- (g) A close personal friend, as defined in s. 765.101;
- (h) A guardian of the person of the decedent at the time of his or her death; or
- (i) A representative ad litem appointed by a court of competent jurisdiction upon a petition heard ex parte filed by any person, who shall ascertain that no person of higher priority exists who objects to the gift of all or any part of the decedent's body and that no evidence exists of the decedent's having made a communication expressing a desire that his or her body or body parts not be donated upon death. Those of higher priority who are reasonably available must be contacted and made aware of the proposed gift and a reasonable search must be conducted which shows that there would have been no objection to the gift by the decedent.

(4) A donee may not accept an anatomical gift if the donee has actual notice of contrary indications by the donor or actual notice that an anatomical gift by a member of a class is opposed by a member of a prior class.

(5) The person authorized by subsection (3) may make the anatomical gift after the decedent's death or immediately before the decedent's death.

(6) An anatomical gift authorizes:

(a) Any examination necessary to assure medical acceptability of the gift for the purposes intended.

(b) The decedent's medical provider, family, or a third party to furnish medical records requested concerning the decedent's medical and social history.

(7) Once the anatomical gift has been made, the rights of the donee are paramount to the rights of others, except as provided by s. 765.517.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 4, ch. 84-264; s. 62, ch. 85-62; s. 5, ch. 95-423; s. 974, ch. 97-102; s. 6, ch. 98-68; s. 12, ch. 99-331; s. 62, ch. 2001-226; s. 2, ch. 2003-46; s. 2, ch. 2008-223; s. 2, ch. 2009-218.

Note.—Created from former s. 736.23; s. 732.912.

765.513 Donees; purposes for which anatomical gifts may be made.—

(1) The following persons or entities may become donees of anatomical gifts of bodies or parts of them for the purposes stated:

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- (a) Any procurement organization or accredited medical or dental school, college, or university for education, research, therapy, or transplantation.
 - (b) Any individual specified by name for therapy or transplantation needed by him or her.
 - (c) The anatomical board or a nontransplant anatomical donation organization, as defined in s. 406.49, for donation of the whole body for medical or dental education or research.
- (2) If multiple purposes are set forth in the document of gift but are not set forth in any priority order, the anatomical gift shall be used first for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.
- (3) The Legislature declares that the public policy of this state prohibits restrictions on the possible recipients of an anatomical gift on the basis of race, color, religion, gender, national origin, age, physical disability, health status, marital status, or economic status, and such restrictions are void and unenforceable.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 94-305; s. 975, ch. 97-102; s. 7, ch. 98-68; s. 63, ch. 2001-226; s. 3, ch. 2009-218; s. 20, ch. 2013-138.

Note.—Created from former s. 736.24; s. 732.913.

765.514 Manner of making anatomical gifts.—

- (1) A person may make an anatomical gift of all or part of his or her body under s. 765.512(1) by:
- (a) Signing an organ and tissue donor card.
 - (b) Registering online with the donor registry.
 - (c) Signifying an intent to donate on his or her driver license or identification card issued by the department. Revocation, suspension, expiration, or cancellation of the driver license or identification card does not invalidate the gift.
 - (d) Expressing a wish to donate in a living will or other advance directive.
 - (e) Executing a will that includes a provision indicating that the testator wishes to make an anatomical gift. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift is nevertheless valid to the extent that it has been acted upon in good faith.
 - (f) Expressing a wish to donate in a document other than a will. The document must be signed by the donor in the presence of two witnesses who shall sign the document in the donor's presence. If the donor cannot sign, the document may be signed for him or her at the donor's direction and in his or her presence and the presence of two witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid. The following form of written document is sufficient for any person to make an anatomical gift for the purposes of this part:
- UNIFORM DONOR CARD

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The undersigned hereby makes this anatomical gift, if medically acceptable, to take effect on death. The words and marks below indicate my desires:

I give:

- (a) any needed organs, tissues, or eyes;
- (b) only the following organs, tissues, or eyes

[Specify the organs, tissues, or eyes]

for the purpose of transplantation, therapy, medical research, or education;

- (c) my body for anatomical study if needed. Limitations or special wishes, if any:

(If applicable, list specific donee;

this must be arranged in advance with the donee.)

Signed by the donor and the following witnesses in the presence of each other:

(Signature of donor)

(Date of birth of donor)

(Date signed)

(City and State)

(Witness)

(Witness)

(Address)

(Address)

(2) The anatomical gift may be made to a donee listed in s. 765.513, and the donee may be specified by name.

(3) Any anatomical gift by a health care surrogate designated by the decedent pursuant to part II of this chapter or a member of a class designated in s. 765.512(3) must be made by a document signed by that person or made by that person's witnessed telephonic discussion, telegraphic message, or other recorded message. History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 83-171; s. 2, ch. 94-305; s. 6, ch. 95-423; s. 976, ch. 97-102; s. 8, ch. 98-68; s. 13, ch. 99-331; s. 64, ch. 2001-226; s. 3, ch. 2008-223; s. 4, ch. 2009-218.

Note.—Created from former s. 736.25; s. 732.914.

765.515 Delivery of donor document.—

(1) If an anatomical gift is made pursuant to s. 765.521, the completed donor registration card shall be delivered to the department, and the department must communicate the donor's intent to the donor registry, but delivery is not necessary to the validity of the gift. If the donor withdraws the gift, the records of the department must be updated to reflect such withdrawal, and the department must communicate the withdrawal to the donor registry for the purpose of updating the registry.

(2) If an anatomical gift is made by the donor to a specified donee, the document of gift, other than a will, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The document of gift may be deposited in any hospital, bank, storage facility, or registry office that accepts such documents for safekeeping or to facilitate the donation of organs and tissue after death.

(3) At the request of any interested party upon or after the donor's death, the person in possession shall produce the document of gift for examination.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 2, ch. 83-171; s. 1, ch. 87-372; s. 7, ch. 95-423; s. 33, ch. 96-418; s. 9, ch. 98-68; s. 65, ch. 2001-226; s. 17, ch. 2008-9; s. 4, ch. 2008-223; s. 5, ch. 2009-218.

Note.—Created from former s. 736.26; s. 732.915.

765.5155 Donor registry; education program.—

(1) The Legislature finds that:

(a) There is a shortage of organ and tissue donors in this state willing to provide the organs and tissue that could save lives or enhance the quality of life for many persons.

(b) There is a need to encourage the various minority populations of this state to donate organs and tissue.

(c) A statewide donor registry having an online donor registration process coupled with an enhanced program of donor education will lead to an increase in the number of organ and tissue donors registered in this state, thus affording more persons who are awaiting organ or tissue transplants the opportunity for a full and productive life.

(2) The agency and the department shall jointly contract for the operation of a donor registry and education program. The contractor shall be procured by competitive solicitation pursuant to chapter 287, notwithstanding an exemption under s. 287.057(3)(e). When awarding the contract, priority shall be given to existing nonprofit groups that are based within the state, have expertise working with procurement organizations, have expertise in conducting statewide organ and tissue donor public education campaigns, and represent the needs of the organ and tissue donation community in the state.

(3) The contractor shall be responsible for:

(a) The development, implementation, and maintenance of an interactive web-based donor registry that, through electronic means, allows for online organ donor registration and the recording of organ and tissue donation records submitted through the driver license identification program or through other sources.

1. The registry must be maintained in a manner that allows, through electronic and telephonic methods, immediate access to organ and tissue donation records 24 hours a day, 7 days a week.

2. Access to the registry must be through coded and secure means to protect the integrity of the data in the registry.

(b) A continuing program to educate and inform medical professionals, law enforcement agencies and officers, other state and local government employees, high school students, minorities, and the public about the laws of this state relating to anatomical gifts and the need for anatomical gifts.

1. Existing community resources, when available, must be used to support the program and volunteers may assist the program to the maximum extent possible.

2. The contractor shall coordinate with the head of a state agency or other political subdivision of the state, or his or her designee, to establish convenient times, dates, and locations for educating that entity's employees.

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(c) Preparing and submitting an annual written report to the agency by December 31 of each year. The report must include:

1. The number of donors on the registry and an analysis of the registration rates by location and method of donation;
2. The characteristics of donors as determined from registry information submitted directly by the donors or by the department;
3. The annual dollar amount of voluntary contributions received by the contractor;
4. A description of the educational campaigns and initiatives implemented during the year and an evaluation of their effectiveness in increasing enrollment on the registry; and
5. An analysis of Florida's registry compared with other states' donor registries.

(4) Costs for the donor registry and education program shall be paid by the agency from the funds deposited into the Health Care Trust Fund pursuant to ss. 320.08047 and 322.08, which are designated for maintaining the donor registry and education program. In addition, the contractor may receive and use voluntary contributions to help support the registry and provide education.

(5) The donor registry established by this section is designated as the "Joshua Abbott Organ and Tissue Registry."

History.—s. 5, ch. 2008-223; s. 6, ch. 2009-218; s. 40, ch. 2010-151; s. 20, ch. 2013-154.

765.51551 Donor registry; public records exemption.—

(1) Information held in the donor registry which identifies a donor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Such information may be disclosed to the following:

(a) Procurement organizations that have been certified by the agency for the purpose of ascertaining or effectuating the existence of a gift under s. 765.522.

(b) Persons engaged in bona fide research if the person agrees to:

1. Submit a research plan to the agency which specifies the exact nature of the information requested and the intended use of the information;
2. Maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;
3. Destroy any confidential records or information obtained after the research is concluded; and
4. Not directly or indirectly contact, for any purpose, any donor or donee.

History.—s. 1, ch. 2008-222; s. 7, ch. 2009-218; s. 1, ch. 2013-65.

765.516 Donor amendment or revocation of anatomical gift.—

(1) A donor may amend the terms of or revoke an anatomical gift by:

(a) The execution and delivery to the donee of a signed statement witnessed by at least two adults, at least one of whom is a disinterested witness.

(b) An oral statement that is made in the presence of two persons, one of whom is not a family member, and communicated to the donor's family or attorney or to the donee. An oral statement is effective only if the procurement organization, transplant hospital, or physician or technician has actual notice of the oral

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amendment or revocation before an incision is made to the decedent's body or an invasive procedure to prepare the recipient has begun.

(c) A statement made during a terminal illness or injury addressed to the primary physician, who must communicate the revocation of the gift to the procurement organization.

(d) A signed document found on or about the donor's person.

(e) Removing his or her name from the donor registry.

(f) A later-executed document of gift which amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(g) By the destruction or cancellation of the document of gift or the destruction or cancellation of that portion of the document of gift used to make the gift with the intent to revoke the gift.

(2) Any anatomical gift made by a will may also be amended or revoked in the manner provided for the amendment or revocation of wills or as provided in paragraph (1)(a).

History.—s. 1, ch. 74-106; s. 113, ch. 75-220; s. 3, ch. 83-171; s. 8, ch. 95-423; s. 977, ch. 97-102; s. 10, ch. 98-68; s. 66, ch. 2001-226; s. 3, ch. 2003-46; s. 6, ch. 2008-223; s. 8, ch. 2009-218; s. 19, ch. 2015-153.

Note.—Created from former s. 736.27; s. 732.916.

765.517 Rights and duties at death.—

(1) The donee, pursuant to s. 765.515(2), may accept or reject an anatomical gift. If the donee accepts a gift to be used for research or education purposes, the donee may authorize embalming and the use of the body in funeral services, subject to the terms of the gift. If the gift is of a part of the body, the donee shall cause the part to be removed without unnecessary mutilation upon the death of the donor and before or after embalming. After removal of the body part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at the donor's death or, if there is no such physician, the physician who certifies the death. After death, those physicians or the donor's primary care physician may participate in, but may not obstruct, the procedures to preserve the donor's organs or tissues and may not be paid or reimbursed for such participation, nor be associated with or employed by, a procurement organization. These physicians may not participate in the procedures for removing or transplanting a part. However, this subsection does not prevent a physician from serving in a voluntary capacity on the board of directors of a procurement organization or participating on any board, council, commission, or similar body related to the organ and tissue procurement system.

(3) The procurement organizations, or hospital medical professionals under the direction thereof, may perform any and all tests to evaluate the deceased as a potential donor and any invasive procedures on the deceased body in order to

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preserve the potential donor's organs. These procedures do not include the surgical removal of an organ or penetrating any body cavity, specifically for the purpose of donation, until:

- (a) It has been verified that the deceased's consent to donate appears in the donor registry or a properly executed document of gift is located; or
 - (b) If a properly executed document of gift cannot be located or the deceased's consent is not listed in the donor registry, a person specified in s. 765.512(2) or (3) has been located, has been notified of the death, and has granted legal permission for the donation.
- (4) All reasonable additional expenses incurred in the procedures to preserve the donor's organs or tissues shall be reimbursed by the procurement organization.
- (5) A person who acts in good faith and without negligence in accord with the terms of this part or under the anatomical gift laws of another state or a foreign country, or attempts to do so, may not be subject to any civil action for damages, may not be subject to any criminal proceeding, and may not be subject to discipline, penalty, or liability in any administrative proceeding.
- (6) The provisions of this part are subject to the laws of this state prescribing powers and duties with respect to autopsies.
- (7) The person making an anatomical gift and the donor's estate are not liable for any injury or damages that result from the making or use of the gift.
- (8) In determining whether an anatomical gift has been made, amended, or revoked under this part, a person may rely upon the representation of an individual listed in s. 765.512, relating to the individual's relationship to the donor or prospective donor, unless the person knows that the representation is untrue.
- History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 4, ch. 83-171; s. 9, ch. 95-423; s. 978, ch. 97-102; s. 14, ch. 99-331; s. 67, ch. 2001-226; s. 7, ch. 2008-223; s. 9, ch. 2009-218.

Note.—Created from former s. 736.28; s. 732.917.

765.518 Eye banks.—

- (1) Any state, county, district, or other public hospital may purchase and provide the necessary facilities and equipment to establish and maintain an eye bank for restoration of sight purposes.
- (2) The Department of Education may have prepared, printed, and distributed:
 - (a) A form document of gift for a gift of the eyes.
 - (b) An eye bank register consisting of the names of persons who have executed documents for the gift of their eyes.
 - (c) Wallet cards reciting the document of gift.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 462, ch. 77-147; s. 68, ch. 2001-226.

Note.—Created from former s. 736.29; s. 732.918.

765.5185 Corneal removal by medical examiners.—

- (1) In any case in which a patient is in need of corneal tissue for a transplant, a district medical examiner or an appropriately qualified designee with training in ophthalmologic techniques may, upon request of any eye bank authorized under s.

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765.518, provide the cornea of a decedent whenever all of the following conditions are met:

(a) A decedent who may provide a suitable cornea for the transplant is under the jurisdiction of the medical examiner and an autopsy is required in accordance with s. 406.11.

(b) No objection by the next of kin of the decedent is known by the medical examiner.

(c) The removal of the cornea will not interfere with the subsequent course of an investigation or autopsy.

(2) Neither the district medical examiner nor the medical examiner's appropriately qualified designee nor any eye bank authorized under s. 765.518 may be held liable in any civil or criminal action for failure to obtain consent of the next of kin.

History.—s. 1, ch. 77-172; s. 1, ch. 78-191; s. 979, ch. 97-102; s. 69, ch. 2001-226; s. 111, ch. 2002-1.

Note.—Former s. 732.9185.

765.519 Enucleation of eyes by licensed funeral directors.—With respect to a gift of an eye as provided for in this part, a licensed funeral director as defined in chapter 497 who has completed a course in eye enucleation and has received a certificate of competence from the Department of Ophthalmology of the University of Florida School of Medicine, the University of South Florida School of Medicine, or the University of Miami School of Medicine may enucleate eyes for gift after proper certification of death by a physician and in compliance with the intent of the gift as defined in this chapter. No properly certified funeral director acting in accordance with the terms of this part shall have any civil or criminal liability for eye enucleation.

History.—s. 1, ch. 74-106; s. 45, ch. 75-220; s. 1, ch. 80-157; s. 70, ch. 2001-226; s. 148, ch. 2004-301.

Note.—Created from former s. 736.31; s. 732.919.

765.521 Donations as part of driver license or identification card process.—

(1) The agency and the department shall develop and implement a program encouraging and allowing persons to make anatomical gifts as a part of the process of issuing identification cards and issuing and renewing driver licenses. The donor registration card distributed by the department shall include the information required by the uniform donor card under s. 765.514 and such additional information as determined necessary by the department. The department shall also develop and implement a program to identify donors which includes notations on identification cards, driver licenses, and driver records or such other methods as the department develops to clearly indicate the individual's intent to make an anatomical gift. A notation on an individual's driver license or identification card that the individual intends to make an anatomical gift satisfies all requirements for consent to organ or tissue donation. The agency shall provide the necessary supplies and forms from funds appropriated from general revenue or contributions from

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interested voluntary, nonprofit organizations. The department shall provide the necessary recordkeeping system from funds appropriated from general revenue. The department and the agency shall incur no liability in connection with the performance of any acts authorized herein.

(2) The department shall maintain an integrated link on its website referring a visitor renewing a driver license or conducting other business to the donor registry operated under s. 765.5155.

(3) The department, after consultation with and concurrence by the agency, shall adopt rules to implement the provisions of this section according to the provisions of chapter 120.

(4) Funds expended by the agency to carry out the intent of this section may not be taken from funds appropriated for patient care.

History.—s. 1, ch. 75-71; s. 1, ch. 77-16; s. 463, ch. 77-147; s. 1, ch. 77-174; ss. 1, 2, ch. 80-134; s. 5, ch. 83-171; s. 10, ch. 95-423; s. 71, ch. 2001-226; s. 8, ch. 2008-223; s. 10, ch. 2009-218; s. 62, ch. 2016-239.

Note.—Former s. 732.921.

765.522 Duty of hospital administrators; liability of hospital administrators and procurement organizations.—

(1) If, based on accepted medical standards, a hospital patient is a suitable candidate for organ or tissue donation, the hospital administrator or the hospital administrator's designee shall, at or near the time of death, notify the appropriate procurement organization, which shall access the donor registry created by s.

765.5155 or any other donor registry to ascertain the existence of an entry in the registry which has not been revoked or a document of gift executed by the decedent. In the absence of an entry in the donor registry, a document of gift, or other properly executed document, the procurement organization shall request:

(a) The patient's health care surrogate, as authorized in s. 765.512(2); or

(b) If the patient does not have a surrogate, or the surrogate is not reasonably available, any of the persons specified in s. 765.512(3), in the order and manner listed,

to consent to the anatomical gift of the decedent's body for any purpose specified in this part. Except as provided in s. 765.512, in the absence of actual notice of opposition, consent need only be obtained from the person or persons in the highest priority class reasonably available.

(2) A document of gift is valid if executed in accordance with this part or the laws of the state or country where it was executed and where the person making the anatomical gift was domiciled, has a place of residence, or was a citizen at the time the document of gift was executed.

(3) The agency shall establish rules and guidelines concerning the education of individuals who may be designated to perform the request and the procedures to be used in making the request. The agency is authorized to adopt rules concerning the documentation of the request, where such request is made.

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(4) If a document of gift is valid under this section, the laws of this state govern the interpretation of the document of gift.

(5) A document of gift or amendment of an anatomical gift is presumed to be valid unless it was not validly executed or was revoked.

(6) There shall be no civil or criminal liability against any procurement organization certified under s. 765.542 or against any hospital or hospital administrator or designee who complies with the provisions of this part and agency rules or if, in the exercise of reasonable care, a request for organ donation is inappropriate and the gift is not made according to this part and agency rules.

(7) The hospital administrator or a designee shall, at or near the time of death of a potential donor, directly notify the affiliated organ procurement organization of the potential organ donor. The organ procurement organization must offer any organ from such a donor first to patients on a Florida-based local or state organ sharing transplant list. For the purpose of this subsection, the term “transplant list” includes certain categories of national or regional organ sharing for patients of exceptional need or exceptional match, as approved or mandated by the Organ Procurement and Transplantation Network, or its agent. This notification may not be made to a tissue bank or eye bank in lieu of the organ procurement organization unless the tissue bank or eye bank is also designated as an organ procurement organization.

History.—s. 1, ch. 86-212; s. 2, ch. 87-372; s. 13, ch. 95-423; s. 980, ch. 97-102; s. 12, ch. 98-68; s. 15, ch. 99-331; s. 75, ch. 2001-226; s. 104, ch. 2003-1; s. 9, ch. 2008-223; s. 11, ch. 2009-218.

Note.—Former s. 732.922.

765.523 Discrimination in access to anatomical gifts and organ transplants prohibited.—

(1) As used in this section, the term:

(a) “Auxiliary aids and services” means:

1. Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

2. Qualified readers, recorded texts, texts in an accessible electronic format, or other effective methods of making visually delivered materials available to individuals with visual impairments.

3. Supported decisionmaking services, including any of the following:

a. The use of a support person to assist an individual in making medical decisions, communicating information to the individual, or ascertaining his or her wishes.

b. The provision of information to a person designated by the individual, consistent with federal and state laws governing the disclosure of health information.

c. Measures used to ensure that the individual’s guardian or legal representative, if any, is included in decisions involving the individual’s health care and that medical decisions are in accordance with the individual’s own expressed interests.

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- d. Any other aid or service that is used to provide information in a format that is readily understandable and accessible to individuals with cognitive, neurological, developmental, or intellectual disabilities.
- (b) “Covered entity” means any of the following:
1. A licensed health care practitioner as defined in s. 456.001.
 2. A health care facility as defined in s. 408.07.
 3. Any other entity responsible for potential recipients of anatomical gifts or organ transplants.
- (c) “Disability” has the same meaning as “developmental disability” and “intellectual disability” as those terms are defined in s. 393.063.
- (d) “Organ transplant” means the transplantation or transfusion of a part of a human body into the body of another individual for the purpose of treating or curing a medical condition.
- (e) “Qualified individual” means an individual who has a disability and meets the clinical eligibility requirements for the receipt of an anatomical gift or an organ transplant, regardless of:
1. The support networks available to the individual;
 2. The provision of auxiliary aids and services; or
 3. Reasonable modifications to the policies, practices, or procedures of a covered entity pursuant to subsection (4).
- (2) A covered entity may not do any of the following solely on the basis of an individual’s disability:
- (a) Consider a qualified individual ineligible to receive an anatomical gift or organ transplant.
- (b) Deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and posttransplant treatment and services.
- (c) Refuse to refer the individual to an organ procurement organization or a related specialist for the purpose of evaluation or receipt of an organ transplant.
- (d) Refuse to place a qualified individual on an organ transplant waiting list.
- (e) Place a qualified individual at a lower priority position on an organ transplant waiting list than the position at which the qualified individual would have been placed if not for the disability.
- (3)(a) A covered entity may take an individual’s disability into account if, following an individualized evaluation of him or her, a physician finds the individual’s disability to be medically significant to the provision of the anatomical gift or organ transplant, but only to the extent that the covered entity is making treatment or coverage recommendations or decisions for the individual.
- (b) If an individual has the necessary support system to assist him or her in complying with posttransplant medical requirements, a covered entity may not consider the individual’s inability to independently comply with the posttransplant medical requirements to be medically significant for the purposes of paragraph (a).
- (4) A covered entity shall make reasonable modifications to policies, practices, or procedures when the modifications are necessary to allow an individual with a

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disability access to services, including transplant-related counseling, information, coverage, or treatment, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the services. Such modifications shall include, but need not be limited to, communication with the persons responsible for supporting the individual with his or her postsurgical and posttransplant care, including medication. Such modifications shall also consider the support networks available to the individual, including, but not limited to, family, friends, and home and community-based services coverage when determining whether the individual is able to comply with posttransplant medical requirements.

(5) A covered entity shall take such steps as may be necessary to ensure that an individual with a disability is not denied services, including transplant-related counseling, information, coverage, or treatment, due to the absence of auxiliary aids and services, unless the covered entity can demonstrate that taking the steps would fundamentally alter the nature of the services being offered or would result in an undue burden on the covered entity.

(6) If a covered entity violates this section, the qualified individual who is affected by the violation may bring an action in the appropriate circuit court for injunctive or other equitable relief.

(7) This section may not be construed to require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant.

History.—s. 1, ch. 2020-139.

765.541 Certification of procurement organizations; agency responsibilities.—The agency shall:

(1) Establish a program for the certification of organizations, corporations, or other entities engaged in the procurement of organs, tissues, and eyes for transplantation.

(2) Adopt rules that set forth appropriate standards and guidelines for the program in accordance with ss. 765.541-765.546 and part II of chapter 408. These standards and guidelines must be substantially based on the existing laws of the Federal Government and this state and the existing standards and guidelines of the United Network for Organ Sharing (UNOS), the American Association of Tissue Banks (AATB), the South-Eastern Organ Procurement Foundation (SEOPF), the North American Transplant Coordinators Organization (NATCO), and the Eye Bank Association of America (EBAA). In addition, the agency shall, before adopting these standards and guidelines, seek input from all procurement organizations based in this state.

(3) Collect, keep, and make available to the Governor and the Legislature information regarding the numbers and disposition of organs, tissues, and eyes procured by each certified procurement organization.

(4) Monitor procurement organizations for program compliance.

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(5) Provide for the administration of the Organ and Tissue Procurement and Transplantation Advisory Board.

History.—ss. 2, 9, ch. 91-271; s. 5, ch. 91-429; s. 5, ch. 94-305; s. 33, ch. 2003-1; s. 201, ch. 2007-230; s. 13, ch. 2009-218.

Note.—Former s. 381.6021.

765.542 Requirements to engage in organ, tissue, or eye procurement.—

(1) The requirements of part II of chapter 408 apply to the provision of services that require licensure pursuant to ss. 765.541-765.546 and part II of chapter 408 and to entities licensed or certified by or applying for such licensure or certification from the agency pursuant to ss. 765.541-765.546. A person may not engage in the practice of organ procurement in this state without being designated as an organ procurement organization by the Secretary of the United States Department of Health and Human Services and being appropriately certified by the agency. A physician or organ procurement organization based outside this state is exempt from these certification requirements if:

(a) The organs are procured for an out-of-state patient who is listed on, or referred through, the United Network for Organ Sharing System; and

(b) The organs are procured through an agreement of an organ procurement organization certified by the state.

(2) A person may not engage in tissue procurement in this state unless it is appropriately certified as a tissue bank by the agency.

(3) A person may not engage in the practice of eye procurement in this state without being appropriately certified as an eye bank by the agency. Funeral directors or direct disposers who retrieve eye tissue for an eye bank certified under this subsection are exempt from the certification requirements under this subsection.

(4) A limited certificate may be issued to a tissue bank or eye bank, certifying only those components of procurement which the bank has chosen to perform. The agency may issue a limited certificate if it determines that the tissue bank or eye bank is adequately staffed and equipped to operate in conformity with the rules adopted under this section.

History.—s. 3, ch. 91-271; s. 6, ch. 94-305; s. 33, ch. 2003-1; s. 202, ch. 2007-230; s. 14, ch. 2009-218.

Note.—Former s. 381.6022.

765.543 Organ and Tissue Procurement and Transplantation Advisory Board; creation; duties.—

(1) There is hereby created the Organ and Tissue Procurement and Transplantation Advisory Board, which shall consist of 14 members who are appointed by and report directly to the Secretary of Health Care Administration. The membership must be regionally distributed and must include:

(a) Two representatives who have expertise in vascular organ transplant surgery;

(b) Two representatives who have expertise in vascular organ procurement, preservation, and distribution;

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- (c) Two representatives who have expertise in musculoskeletal tissue transplant surgery;
 - (d) Two representatives who have expertise in musculoskeletal tissue procurement, processing, and distribution;
 - (e) A representative who has expertise in eye and cornea transplant surgery;
 - (f) A representative who has expertise in eye and cornea procurement, processing, and distribution;
 - (g) A representative who has expertise in bone marrow procurement, processing, and transplantation;
 - (h) A representative from the Florida Pediatric Society;
 - (i) A representative from the Florida Society of Pathologists; and
 - (j) A representative from the Florida Medical Examiners Commission.
- (2) The advisory board members may not be compensated for their services except that they may be reimbursed for their travel expenses as provided by law. Members of the board shall be appointed for 3-year terms of office.
- (3) The board shall:
- (a) Assist the agency in the development of necessary professional qualifications, including, but not limited to, the education, training, and performance of persons engaged in the various facets of organ and tissue procurement, processing, preservation, and distribution for transplantation;
 - (b) Assist the agency in monitoring the appropriate and legitimate expenses associated with organ and tissue procurement, processing, and distribution for transplantation and developing methodologies to assure the uniform statewide reporting of data to facilitate the accurate and timely evaluation of the organ and tissue procurement and transplantation system;
 - (c) Provide assistance to the Florida Medical Examiners Commission in the development of appropriate procedures and protocols to ensure the continued improvement in the approval and release of potential donors by the district medical examiners and associate medical examiners;
 - (d) Develop with and recommend to the agency the necessary procedures and protocols required to assure that all residents of this state have reasonable access to available organ and tissue transplantation therapy and that residents of this state can be reasonably assured that the statewide procurement transplantation system is able to fulfill their organ and tissue requirements within the limits of the available supply and according to the severity of their medical condition and need; and
 - (e) Develop with and recommend to the agency any changes to the laws of this state or administrative rules or procedures to ensure that the statewide organ and tissue procurement and transplantation system is able to function smoothly, effectively, and efficiently, in accordance with the Federal Anatomical Gift Act and in a manner that assures the residents of this state that no person or entity profits from the altruistic voluntary donation of organs or tissues.
- History.—ss. 4, 9, ch. 91-271; s. 5, ch. 91-429; s. 7, ch. 94-305; s. 7, ch. 2000-305; s. 33, ch. 2003-1; s. 15, ch. 2009-218.

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Note.—Former s. 381.6023.

765.544 Fees; organ and tissue donor education and procurement.—

(1) In accordance with s. 408.805, an applicant or a certificateholder shall pay a fee for each application submitted under this part, part II of chapter 408, and applicable rules. The amount of the fee shall be as follows:

(a) An initial application fee of \$1,000 from organ procurement organizations and tissue banks and \$500 from eye banks.

(b) Annual fees to be used, in the following order of priority, for the certification program, the advisory board, maintenance of the donor registry, and the organ and tissue donor education program, which may not exceed \$35,000 per organization:

1. Each organ procurement organization shall pay the greater of \$1,000 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal or operational year.

2. Each tissue procurement organization shall pay the greater of \$1,000 or 0.25 percent of its total revenues from procurement and processing activity in this state by the certificateholder during its most recently completed fiscal or operational year.

3. Each eye bank shall pay the greater of \$500 or 0.25 percent of its total revenues produced from procurement activity in this state by the certificateholder during its most recently completed fiscal or operational year.

(2) The agency shall specify by rule the administrative penalties for the purpose of ensuring adherence to the standards of quality and practice required by this chapter, part II of chapter 408, and applicable rules of the agency for continued certification.

(3)(a) Proceeds from fees, administrative penalties, and surcharges collected pursuant to this section must be deposited into the Health Care Trust Fund.

(b) Moneys deposited in the trust fund pursuant to this section must be used exclusively for the implementation, administration, and operation of the certification program and the advisory board, for maintaining the donor registry, and for organ and tissue donor education.

(4) As used in this section, the term “procurement activity in this state” includes the bringing into this state for processing, storage, distribution, or transplantation of organs or tissues that are initially procured in another state or country.

History.—s. 5, ch. 91-271; s. 8, ch. 94-305; s. 32, ch. 96-418; ss. 3, 4, ch. 98-68; s. 54, ch. 2002-1; s. 33, ch. 2003-1; s. 203, ch. 2007-230; s. 19, ch. 2008-9; s. 16, ch. 2009-218.

Note.—Former s. 381.6024.

765.545 Physician supervision of cadaveric organ and tissue procurement coordinators.—Procurement organizations may employ coordinators who are registered nurses, physician assistants, or other medically trained personnel who meet the relevant standards for procurement organizations adopted by the agency under s. 765.541, to assist in the medical management of organ donors or in the surgical procurement of cadaveric organs, tissues, or eyes for transplantation or

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research. A coordinator who assists in the medical management of organ donors or in the surgical procurement of cadaveric organs, tissues, or eyes for transplantation or research must do so under the direction and supervision of a physician medical director pursuant to rules and guidelines adopted by the agency. With the exception of organ procurement surgery, this supervision may be indirect supervision. For purposes of this section, the term “indirect supervision” means that the medical director is responsible for the medical actions of the coordinator, that the coordinator is operating under protocols expressly approved by the medical director, and that the medical director or his or her physician designee is always available, in person or by telephone, to provide medical direction, consultation, and advice in cases of organ, tissue, and eye donation and procurement. Although indirect supervision is authorized under this section, direct physician supervision is to be encouraged when appropriate.

History.—s. 6, ch. 91-271; s. 9, ch. 94-305; s. 1035, ch. 95-148; s. 34, ch. 2003-1; s. 17, ch. 2009-218.

Note.—Former s. 381.6025.

765.546 Procurement of cadaveric organs for transplant by out-of-state physicians.—Any physician currently licensed to practice medicine and surgery in the United States may surgically procure in this state cadaveric organs for transplant if:

- (1) The organs are being procured for an out-of-state patient who is listed on, or referred through, the United Network for Organ Sharing System; and
- (2) The organs are being procured through the auspices of an organ procurement organization certified in this state.

History.—s. 7, ch. 91-271; s. 33, ch. 2003-1.

Note.—Former s. 381.6026.

765.547 Cooperation between medical examiner and procurement organization.—

- (1) A medical examiner and procurement organization shall cooperate with each other in order to maximize opportunities to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.
- (2) The Florida Medical Examiners Commission shall adopt rules establishing cooperative responsibilities between medical examiners and procurement organizations to facilitate and expedite completion of the medical examiner’s responsibilities under chapter 406 in a manner that will maximize opportunities to recover anatomical gifts.
- (3) This part does not supersede any part of chapter 406 relating to medical examiners and the disposition of dead bodies.

History.—s. 18, ch. 2009-218.