

**STORAGE NAME:** h0999.cor

**DATE:** April 6, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
CORRECTIONS  
ANALYSIS**

**BILL #:** CS/HB 999

**RELATING TO:** Anatomical Gifts

**SPONSOR(S):** Representative Andrews

**TIED BILL(S):** SB 1970

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME & PUNISHMENT YEAS 6 NAYS 0
  - (2) CORRECTIONS
  - (3) GOVERNMENTAL RULES & REGULATIONS
  - (4) CRIMINAL JUSTICE APPROPRIATIONS
  - (5)
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I. SUMMARY:

CS/HB 999 provides that the Department of Corrections shall provide each person remanded to the custody of the department the opportunity to obtain an anatomical gift donor card as provided in s. 732.914, F.S.

The bill also provides that the bill shall not be construed as conferring a right on the part of an inmate to make an anatomical gift. CS/HB 999 further provides that any claim or action filed on behalf of an inmate which seeks to enforce an alleged right to make or donate an anatomical gift is a nullity and shall be summarily dismissed by the court.

This bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

The bill provides each person remanded to the custody of the Department of Corrections the opportunity to exercise the option to obtain an anatomical gift donor card.

B. PRESENT SITUATION:

**Organ Donors and Donations**

More than 67,000 U.S. patients are currently waiting for an organ transplant; more than 2,000 new patients are added to the waiting list each month. Every day, about 9 to 10 people die while waiting for a transplant of a vital organ, such as a heart, liver, kidney, pancreas, lung or bone marrow. Acceptable organ donors can range in age from newborn to 65 years or more. <sup>1</sup>

An estimated 10,000 to 14,000 people who die each year meet the criteria for organ donation, but less than half of that number become actual organ donors.

Federal law requires organ procurement organizations to participate in the Organ Procurement Transplantation Network (OPTN) for the purpose of matching donor organs to waiting recipients. 42 U.S.C. § 274. The OPTN is managed by the United Network for Organ Sharing (UNOS) within the Public Health Service of the Department of Health and Human Service which cooperates with organ procurement organizations throughout the country to place organs and tissues. Currently, there are 54 organ procurement organizations (OPOs) across the country, which provide organ procurement services to some 279 transplant centers.

An individual who is brain dead but is on a respirator and has a beating heart is an acceptable donor for heart, heart valves, pancreas, liver, skin, corneas, lungs, bone, kidney, and small bowel. An individual who has died and is no longer breathing and does not have a heartbeat is considered to be an acceptable donor for corneas, blood vessels, cartilage, skin and bone.

**Organ Donation Guidelines**

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<sup>1</sup> National Kidney Foundation of Illinois, Inc. <http://www.nkfi.org/orgnfacts.htm>

The Federal Department of Health and Human Services has published "Guidelines for Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs". 42 C.F.R. § 486. According to these guidelines, persons who meet any of a specified list of criteria should be excluded<sup>2</sup> from donation of organs or tissues<sup>3</sup> :

unless the risk to the recipient of not performing the transplant is deemed to be greater than the risk of HIV transmission and disease (e.g., emergent, life-threatening illness requiring transplantation when no other organs/tissues are available and no other lifesaving therapies exist). In such a case, informed consent regarding the possibility of HIV transmission should be obtained from the recipient.

The Food and Drug Administration has published "Guidance for Industry: Screening and Testing of Donors of Human Tissue Intended for Transplantation" that states that tissue should not be accepted for transplantation from donors who have any of a specified list of "exclusionary risk factors". Included in the list are "current inmates of correctional systems (including jails and prisons) and individuals who have been incarcerated for more than 72 consecutive hours during the previous 12 months."

As mentioned in a previous analysis of this bill, the Life Link Foundation, a Florida organ procurement organization, reports that organs from prisoners are highly suspect for transmissible diseases such as AIDS and Hepatitis. The Federal Center for Disease Control requires Organ Procurement Agencies to identify any such organs as "high risk" for disease transmission and strongly discourages the use of such organs. Also, Food and Drug Administration (FDA) regulations prohibit the use of non-organ tissues from prisoners.

### **Anatomical Gifts**

Part X of Chapter 732 of Florida Statutes is titled "Anatomical Gifts". Section 732.912, F.S. sets forth procedures by which a person or the person's family may donate all or part of his or her body upon death. The term "death" is defined to mean "the absence of life as determined, in accordance with currently acceptable 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."

Section 732.914, F.S. provides that an anatomical gift may be made by will or by way of a donor card that has been signed in the presence of two witnesses. A procedure by which a person can revoke or amend a will or donor card is also provided in s. 732.916, F.S. Section 732.92155, F.S. provides for the use by the Agency for Health Care Administration of The Florida Organ and Tissue Donor Education and Procurement Trust Fund to pay for an organ and tissue donation registry which allows hospitals and organ and tissue procurement agencies access to organ and tissue donation documents.

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<sup>2</sup> Included in this list are inmates of correctional systems.

<sup>3</sup> The term "organ" is defined as "a human kidney, liver, heart, lung, or pancreas". 42 C.F.R. §121. The term "human tissue" means any tissue derived from the human body other than the kidney, lungs, heart, liver or pancreas. 21 C.F.R. §1270.3

C. EFFECT OF PROPOSED CHANGES:

CS/HB 999 provides that each person remanded to the custody of the department be given the opportunity to obtain an anatomical gift donor card as provided in s. 732.914. The bill also states that nothing in the section shall be construed as conferring a right on the part of an inmate to make an anatomical gift.

Additionally, the bill provides that any claim or action filed on behalf of an inmate which seeks to enforce an alleged right to make or donate an anatomical gift is a nullity and shall be summarily dismissed by the court.

D. SECTION-BY-SECTION ANALYSIS:

**Section 1:** Provides that each person remanded to the custody of the department be afforded the opportunity to obtain an anatomical gift donor card as provided in s. 732.914, F.S.; states that nothing in the section shall be construed as conferring a right on the part of an inmate to make an anatomical gift and provides that any claim or action filed on behalf of an inmate which seeks to enforce an alleged right to make or donate an anatomical gift is a nullity and shall be summarily dismissed by the court.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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D. FISCAL COMMENTS:

The Agency for Health Care Administration does not expect CS/HB 999 to have any fiscal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

A person who is an inmate of a correctional facility is at high risk of exposure to a number of communicable diseases. It is possible that AIDS, Hepatitis B, Hepatitis C, or other disease could be transmitted to a recipient of an organ donation.

According to the bill analysis provided by the Agency for Health Care Administration, "[r]epresentatives from the Organ and Tissue Procurement and Transplantation Advisory Board indicated in an advisory board meeting held March 3, 2000, the chance of a transplant center accepting such high risk prisoners as a donor would be very remote."

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

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