

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 530

SPONSOR: Senator Smith

SUBJECT: Anatomical Gifts

DATE: February 13, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill creates the Nick Oelrich Gift of Life Act. The bill revises Part V of chapter 765, F.S., which governs anatomical gifts, as follows:

- Prohibits the override by a family member, guardian, representative ad litem, or health care surrogate of a decedent's wishes regarding an anatomical gift;
- Specifies that a written donor document is legally sufficient and is legally binding;
- Authorizes the decedent's medical providers, family or other third party to furnish information regarding the decedent's medical and social history; and
- Revises the provisions regarding amendment or revocation of a donor designation by:
  - Eliminating the option for a donor to amend or revoke orally through a statement to the donor's spouse, and
  - Clarifying that a donor may amend or revoke through a signed document found on or about the donor's person, but not through a signed document found in the donor's effects.

This bill amends ss. 765.512 and 756.516, F.S.

## II. Present Situation:

In an effort to encourage organ and tissue donation, the 1969 Legislature enacted legislation modeled after the national Uniform Anatomical Gift Act. Part V of ch. 765, F.S., establishes the process by which individuals, their families, or others may donate organs and tissue.

Section 765.510, F.S., establishes the Legislature's purpose for the creation of the Anatomical Gifts statutes. Specifically, the Legislature intended to encourage and aid the development of

reconstructive medicine and surgery and the development of medical research by regulating the gift of the body, or parts of the body, after the death of a donor.

Section 765.512, F.S., provides that any person able to make a will may donate all or part of his or her body for the purpose of transplantation or medical research. An anatomical gift made by an adult donor and not revoked by the donor is irrevocable and does not require the consent of any person after the donor's death. Also, any member of specified classes of relatives and other persons may make an anatomical gift of parts or all of a decedent's body, in the absence of contrary information or notice of opposition by a member of the specified classes. Persons who may donate all or part of the decedent's body include the spouse, an adult son or daughter, either parent, an adult brother or sister, a grandparent, the guardian of the person at the time of death, or a representative ad litem appointed by the court.

Section 765.514, F.S., provides that an anatomical gift may be made by will or by another document signed by the donor in the presence of two witnesses. If the donation is listed in the donor's will, the donation becomes effective upon the donor's death without waiting for probate.

An anatomical gift may be made to an individual specified by name. The law prohibits restrictions on the possible recipient on the basis of race, color, religion, sex, national origin, age, physical handicap, health status, marital status, or economic status. A donor may designate the surgeon or physician to carry out his or her donation wish. However, the physician who serves as the recipient of the donation shall not participate in the removal or transplantation process.

Amendment or revocation of an anatomical gift is addressed in section 765.516, F.S. An individual may revoke authorization for donation by: 1) a signed statement, 2) an oral statement made to the donor's spouse or made in the presence of two persons and communicated to the donor's family or attorney, 3) a statement during a terminal illness or injury addressed to an attending physician, or 4) a signed document found on the donor's person or in the donor's effects.

The Agency for Health Care Administration (AHCA or Agency) oversees the program by certifying procurement organizations<sup>1</sup> to conduct business in Florida, providing donor education, and maintaining an organ and tissue donor registry in cooperation with the Department of Highway Safety and Motor Vehicles (DHSMV). The Department of Highway Safety and Motor Vehicles permits driver license applicants to register their desire to be an organ and tissue donor by completing a donor document and having the "donor" notation placed on the front of their driver's license. On currently valid Florida Driver's licenses, 3,353,617 individuals carry the organ donor notation. The Agency provides DHSMV with the donor registration forms. These forms are paid for from the Organ and Tissue Donor Education and Procurement Trust Fund.

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<sup>1</sup> The identification of donors and coordination of organ retrieval by surgical teams is the responsibility of 61 Organ Procurement Organizations (OPOs) across the U.S. OPOs and tissue banks recover, preserve, and distribute organs and tissues for transplant. Each OPO has a geographic region within which it serves hospitals where potential donors have been identified. Under a government contract, the nation's Organ Procurement and Transplantation Network formulates allocation policy based on input from transplant professionals, patients, donor groups, and the public. Ultimately, these policies determine, for any given donor, which waiting patient has the highest priority. See websites on Uniform Network of Organ Sharing (<http://www.unos.org>) and U.S. Department of Health and Human Services, Health Resources and Services Administration (<http://www.hrsa.gov>).

Moneys deposited into the trust fund must be used exclusively for the implementation, administration, and operation of the certification program and the advisory board, for maintaining the organ and tissue donor registry, and for organ and tissue donor education.

According to AHCA, while s. 765.512, F.S., provides that an organ donor will is irrevocable and does not require the consent or concurrence of any other person, it is common practice by those entities procuring organs to acquiesce to the wishes of the family or guardian regarding donation. If the family/guardian does not agree to the procurement, the organ(s) are not taken. The organ procurement organizations feel that family/guardian permission prior to donation is prudent and professional and may prevent potential litigation against them. Out of compassion and respect for the donor's family/guardian at a very stressful emotional time, as well as legal concerns, organ procurement organizations are reluctant to procure organs without that consent.

Nick Oelrich was the son of Alachua County Sheriff Stephen Oelrich. He was a high school football player and an avid golfer. In 1995, shortly after his graduation from Gainesville High School, 18-year-old Nick Oelrich died as a result of a tragic fall. Through the donation of his organs and tissue the lives of 108 people were saved or enhanced. As a result of his experience, Sheriff Oelrich proposed the formation of the Gift of Life Foundation to the National Sheriffs' Association (NSA) in March 1997. The NSA voted to establish the NSA Gift of Life Foundation for the purpose of promoting organ and tissue donation awareness on national, regional, and local levels. The NSA Gift of Life Committee was established with the goal of enlisting the assistance of every Sheriff's Office in the United States in educating the law enforcement community and our society on the importance of giving the gift of life. Sheriff Oelrich serves as the NSA's national spokesperson for organ and tissue donation, as well as chairman of the Gift of Life Foundation.<sup>2</sup>

### **III. Effect of Proposed Changes:**

The bill creates the "Nick Oelrich Gift of Life Act" in honor of the son of Alachua County Sheriff Stephen M. Oelrich. The bill amends chapter 765, F.S., to revise procedures relating to anatomical gifts. Amendments to s. 765.512, F.S., prohibit a family member, guardian, representative ad litem, or health care surrogate from modifying a decedent's wishes or denying or preventing an anatomical gift from being made. In the absence of contrary indications by the decedent, the organ donation document would be a legally sufficient document of informed consent and would be legally binding. The bill adds an authorization for informational requests concerning the decedents medical and social history to be directed to the decedent's family or to third parties when all or part of a decedent's body is donated.

The bill amends s. 765.516, F.S., which establishes the ways in which a donor may amend the terms of, or revoke, an anatomical gift. The bill deletes the option of a donor amending or revoking an anatomical gift by an oral statement that is made to the donor's spouse. The current provision for an amendment to be made by an oral statement made in the presence of two persons and communicated to the donor's family or attorney or to the donee is amended to specify that the two persons must be persons other than the donor's spouse. The bill also deletes the acceptability of a signed document found in the donor's effects.

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<sup>2</sup> See the website of the Gift of Life Foundation at <http://www.nsagiftoflife.org>

The bill takes effect July 1, 2003.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could result in an increase in the donation of organs and tissue for individuals who wait for such assistance.

C. Government Sector Impact:

AHCA does not anticipate any costs associated with this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.