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# *Legislative Briefs*

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## **ORGAN DONATION**

2007 Wisconsin Act 106, passed by the legislature and signed by Governor Doyle on March 17, 2008, codifies the 2006 Revised Uniform Anatomical Gift Act (RUAGA) in the Wisconsin Statutes. Act 106 was introduced as 2007 Senate Bill 310 on November 2, 2007, by Senators Risser and Roessler, and cosponsored by Representatives Wieckert and Staskunas. The senate passed the bill unanimously on January 15, 2008, and it was concurred in unanimously by the assembly on February 28, 2008.

### **BACKGROUND**

The 2006 RUAGA is a uniform body of law developed by the nongovernmental National Conference of Commissioners of Uniform State Laws to further standardize anatomical gifts under individual states' laws. By adopting the 2006 RUAGA with slight modifications, 2007 Wisconsin Act 106 streamlines the procedure for making or revoking anatomical gifts one's self, or on behalf of a person who has died or is near death. The act also lowers the minimum age for anatomical gifts, specifically authorizes the Wisconsin Department of Health Services (DHS) to create a donor registry in Wisconsin, and makes other changes to bring the state in line with the 30 other states that have adopted the 2006 RUAGA in some form.

### **MAKING A GIFT**

Prior to the passage of Act 106, any adult could make an anatomical gift by formally expressing his or her desire to do so. A person of any age could refuse to make an anatomical gift with the same type of formal statement. Under the new law, a donor can make a gift starting at age 15 and a half, and

the law eliminates the age requirement if the donor is an emancipated minor. An individual of any age may still refuse to make an anatomical gift. The new law also allows a parent or guardian to revoke an anatomical gift or revoke a refusal to make an anatomical gift by a deceased minor.

Act 106 also increases the significance of a notation of intention to make an anatomical gift, traditionally known as a donor sticker, that appears on a driver's license or identification card. Prior to the passage of Act 106, a donor sticker served as notice to health care professionals to look for a written document of gift. A written document of gift was contained on the reverse side of the license or identification and needed to be completed by the donor before the donor sticker would have any significance. The written document of gift is no longer required under Act 106, so a donor sticker or other notation of intent to make a gift on a driver's license or identification serves as the formal statement required to make a gift, with no reference to outside documents or statements necessary.

### **GIFTS ON BEHALF OF OTHERS**

Act 106 streamlines the process for making anatomical gifts on behalf of a person who has died or is near death. Under the act, no one may amend or revoke existing gifts on behalf of another person if that person has already made an unrevoked anatomical gift. The only exception is if the donor is a minor and the gift is made or revoked by a parent or guardian. The law continues to prohibit any person from revoking or amending an adult's refusal to make a gift.

In cases where an individual who has died or is near death has been silent on mak-

ing or refusing anatomical gifts during his or her lifetime, certain third parties are authorized to make gift decisions on that person's behalf. Prior to Act 106, the statutes contained a prioritized list of individuals who could authorize an anatomical gift in such a situation. Under Act 106, the list remains, but is expanded and reordered to provide that gift decisions can be made by:

- 1) a health care agent under a power of attorney for health care, or a person who is otherwise expressly authorized in a record that is signed by the donor to make an anatomical gift;
- 2) a spouse;
- 3) adult children;
- 4) parents;
- 5) adult siblings;
- 6) adult grandchildren;
- 7) grandparents;
- 8) adults who exhibited special care and concern for the decedent;
- 9) a guardian of the person at the time of death; and
- 10) any other persons having authority to dispose of the decedent's body.

Health care agents and other individuals with power of attorney for health care, or signed advanced directives regarding medical treatment, have moved from lowest priority to highest in making organ donation decisions. The new law also adds to the list adult grandchildren, adults who exhibited special care and concern for the decedent, and any other persons having authority to dispose of the decedent's body.

Finally, under Act 106, no person may make an anatomical gift on behalf of another if there is an individual of higher priority on the list who is reasonably available to make such a decision.

**DONOR REGISTRY**

Act 106 also allows, but does not require,

DHS to create an organ donor registry and promulgate administrative rules to govern the registry. If DHS elects to establish an organ donor registry, then the Wisconsin Department of Transportation (DOT) will be required to cooperate with DHS by providing any information on donor status noted in DOT records.

**VALIDITY OF GIFTS IN OTHER JURISDICTIONS**

With the passage of Act 106, gifts made in other jurisdictions, under the laws of those jurisdictions, will be recognized in Wisconsin. Under the new law, an anatomical gift is valid if it is in accordance with: Wisconsin law; the laws of the state or country in which the gift is made; or the laws of the state or country where the donor was domiciled, held a residence, or was considered a foreign national.

**EFFECTIVE DATE**

2007 Wisconsin Act 106 took effect on April 1, 2008, and is applicable to any gift made, amended, revoked, or refused as of that date.

**FOR MORE INFORMATION**

View a copy of 2007 Wisconsin Act 106 at: [www.legis.wi.gov/2007/data/acts/07Act106.pdf](http://www.legis.wi.gov/2007/data/acts/07Act106.pdf)

To learn more about RUAGA and organ donation in Wisconsin, visit:

NCCUSL's Uniform Anatomical Gift Act: [www.anatomicalgiftact.org](http://www.anatomicalgiftact.org)

DHS's Organ and Tissue Donor Program: <http://dhs.wi.gov/health/donatelife>

Wisconsin Donor Network: [www.wisdonornetwork.org](http://www.wisdonornetwork.org)

University of Wisconsin Hospital and Clinics Organ Procurement Organization: [www.uwhealth.org/organdonation/madisonwisconsin/10868](http://www.uwhealth.org/organdonation/madisonwisconsin/10868)