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BILL ANALYSIS

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Senate Bills 712, 713, and 714 (as enacted)
House Bills 4940, 4941, and 4945 (as enacted)
Sponsor: Senator Hansen Clarke (S.B. 712)
Senator Jason E. Allen (S.B. 713)
Senator Roger Kahn, M.D. (S.B. 714)
Representative Paul Condino (H.B. 4940)
Representative Kathy Angerer (H.B. 4941)
Representative Brian Calley (H.B. 4945)
Senate Committee: Health Policy
House Committee: Health Policy

PUBLIC ACTS 36, 37, & 38 of 2008
PUBLIC ACTS 39, 40, & 41 of 2008

Date Completed: 2-12-09

RATIONALE

Each year, organ and tissue transplants save the lives of tens of thousands of individuals across the nation, but many more die while waiting. At present, several thousand Michigan residents are waiting for an organ or tissue in order to survive. Over the past few years, several initiatives have been launched to raise awareness of the need for more organ and tissue donations and to make it easier for people to designate themselves as potential donors; for example, residents now have the option to include a heart insignia on their driver license or State identification card. It became clear, however, that a significant impediment to donations remained in the patchwork of states' donation laws. Several decades ago, the National Conference of Commissioners on Uniform State Laws (NCCUSL) proposed a model Uniform Anatomical Gift Act, which Michigan and all other states adopted. Subsequently, however, states made various revisions to their individual laws, and Federal regulations were implemented to address the role of hospitals and procurement organizations in the donation process.

The result was a hodgepodge of conflicting state and Federal laws that could be confusing and could affect the implementation of the choice a donor made during his or her life, depending on where he or she died. For example, the laws varied from state to state as to whether a

relative or caregiver could override a person's choice to donate or not to donate, and a decision made in one state might not be honored by another. There were concerns that the lack of uniformity would interfere with procurement efforts. Transplantation frequently occurs across state lines and requires speed and efficiency to keep the organ or tissue viable, leaving no time for hospitals and procurement organizations to research and try to conform to variations in state and Federal laws and regulations. To address inconsistencies among the states and improve the organ donation and allocation system, NCCUSL promulgated an updated Uniform Anatomical Gift Act in 2006. It was suggested that Michigan should adopt the most recent version of the law.

CONTENT

House Bill 4940 amended Part 101 (Uniform Anatomical Gift Law) and Part 102 (Disposition of Human Body Parts) of the Public Health Code to do the following:

- **Change the title of Part 101 to the "Revised Uniform Anatomical Gift Law".**
- **Revise the criteria that an individual must meet to make an anatomical gift during his or her life.**

- Revise the list of people who are authorized to make an anatomical gift on a donor's behalf upon or near death.
- Revise provisions pertaining to a document of gift and procedures for amending or revoking a document of gift.
- Revise procedures for determining the recipient of an anatomical gift.
- Prescribe procedures by which an individual may refuse to make an anatomical gift.
- Require a record search to determine whether a decedent has made an anatomical gift.
- Require each hospital to enter into agreements or affiliations with procurement organizations, and authorize administrative sanctions for failure to comply.
- Require the Secretary of State to maintain a donor registry that provides electronic access to procurement organizations.
- Allow people to create and maintain a donor registry that is not established by or under contract with the State, and require the registry to give an organ procurement organization access to its records of anatomical gifts.
- Make it a felony to purchase or sell a body part for transplant or falsify or damage a document of gift for financial gain, and prescribe penalties.

The bill also repealed a section requiring hospitals to implement a policy for the request of anatomical gifts upon or near the death of a patient.

Senate Bill 713 amended the Code of Criminal Procedure to add to the sentencing guidelines the felonies enacted under House Bill 4940.

House Bill 4941 amended Public Act 222 of 1972 (which provides for an official State personal identification card) to revise provisions regarding the information contained on the ID card and the use of that information.

House Bill 4945 amended the Estates and Protected Individuals Code to provide a mechanism for the resolution

of a conflict between the terms of an advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift.

Senate Bills 712 and 714 amended the Michigan Vehicle Code and Public Act 181 of 1953 (which governs county medical examiners), respectively, to make references to Part 101 of the Public Health Code, and refer to the anatomical gift donor registry, rather than the organ, tissue, and eye donor registry.

Senate Bill 714 named the section it amended "Kyle Ray Horning's Law".

House Bill 4940 was tie-barred to all of the other bills, which were tie-barred to House Bill 4940. House Bill 4940 took effect on May 1, 2008. The other bills took effect on March 17, 2008. House Bills 4940, 4941, and 4945 and Senate Bill 713 are described below in further detail.

House Bill 4940

Anatomical Gift during Donor's Life

Previous Law. An individual who was at least 18 years old and of sound mind could make a gift of all or a physical part of his or her body, effective upon his or her death, to any of the following:

- Any hospital, surgeon, or physician for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.
- Any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy.
- Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.
- Any specified individual for therapy or transplantation.
- Any approved or accredited school of optometry, nursing, or veterinary medicine.

The bill deleted these provisions.

Enacted Provisions. Subject to provisions regarding the refusal or revocation of an

anatomical gift and people authorized to make a gift on a donor's behalf, an anatomical gift of a donor's body or body part may be made during the donor's life for the purpose of transplantation, therapy, research, or education in the manner provided in the bill by any of the following:

- The donor, if he or she is an adult (a person at least 18 years old) or if he or she is a minor who is emancipated or has been issued a driver license or ID card because he or she is at least 16 years old.
- An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift.
- The donor's parent, if the donor is an unemancipated minor.
- The donor's guardian.

(The bill defines "agent" as an individual who is authorized to make health care decisions on the principal's behalf by a power of attorney for health care and/or is expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal. "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.)

Gift upon or near Death; Authorized People

Previous Law. Upon or immediately before the death of an individual who had not made an anatomical gift, an individual having the following relationship to that person could, in the following order of priority, make an anatomical gift of the deceased's body for a purpose described above:

- A patient advocate designated under the Estates and Protected Individuals Code (EPIC) who was authorized to make such a gift.
- The spouse.
- An adult son or daughter.
- Either parent.
- An adult brother or sister.
- The decedent's guardian at the time of death.
- Another individual who was authorized or under obligation to dispose of the body.

An individual described above could make a gift of all or part of a decedent's body if each of the following circumstances existed:

- An individual with a higher priority to make the gift was not available or was not capable of making the decision at the time of the decedent's death.
- The individual making the gift had not received actual notice that the decedent had expressed an unwillingness to make the gift.
- The individual making the gift had not received actual notice that an individual with equal or greater priority opposed the making of the gift.

A gift made by an individual was not revocable by an individual having a lower priority.

If the donee had actual notice that the decedent had expressed an unwillingness to make the gift, or actual notice that an individual with a higher priority than that of the individual making the gift opposed it, the donee could not accept the gift.

The bill deleted all of these provisions.

Enacted Provisions. Under the bill, subject to restrictions described below and unless otherwise barred, an anatomical gift of a decedent's body or body part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of people who is reasonably available, in the following order of priority:

- An agent of the decedent at the time of death who could have made an anatomical gift immediately before the decedent's death.
- The decedent's spouse.
- The decedent's adult children.
- The decedent's parents.
- The decedent's adult siblings.
- The decedent's adult grandchildren.
- The decedent's grandparents.
- An adult who exhibited special care and concern for the decedent.
- The people who were acting as the guardians of the person of the decedent at the time of death.
- The people assigned by the State of Michigan to authorize medical care for the decedent at the time of death, including public ward custodians, correctional or

mental health facility personnel, or foster parents.

- Any other person who has the authority to dispose of the decedent's body, including unidentified bodies, under EPIC.

(The bill defines "decedent" as a deceased individual whose body or body part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to this definition and restrictions imposed by law other than Part 101, a fetus. The term does not include a blastocyst, embryo, or fetus that is the subject of an abortion.)

If more than one member of a specified class (other than a spouse, an adult who exhibited special care and concern, or another person who has the authority to dispose of the body) is entitled to make an anatomical gift, a gift may be made by a member of the class unless he or she or a person to whom the gift may pass knows (has actual knowledge) of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class is reasonably available to make or object to the making of the gift.

(The bill defines "reasonably available" as able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift. "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.)

In determining whether an anatomical gift has been made, amended, or revoked under Part 101, a person may rely upon representations of an individual listed above (other than the decedent's agent) relating to his or her relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Will; Other Document of Gift

Previous Law. Previously, a gift of all or part of a donor's body could be made by will.

The gift became effective upon the death of the testator without waiting for probate. If the will was not probated, or if it was declared invalid for testamentary purposes, the gift, to the extent that it had been acted upon in good faith, remained valid and effective.

An anatomical gift also could be made by document of gift other than a will. A gift made by a document of gift became effective upon the donor's death. A document of gift could be a personal ID card or driver license that contained a statement that the licensee was an organ and tissue donor, along with the signature of the licensee and at least one witness, or a heart insignia. Additionally, a uniform donor card in the form prescribed by the Public Health Code could serve as a document of gift. If the donor did not specify a gift of his or her entire body, the gift was limited to physical parts.

A donor who was unable to sign a document of gift could direct another individual to sign it on his or her behalf if the individual's signature was made in the presence of the donor and at least one witness, who also had to sign the document of gift in the donor's presence.

A gift by a designated individual had to be made by a document signed by the person or made by his or her telegraphic, electronic, recorded telephonic, or other recorded message.

The bill deleted these provisions.

Enacted Provisions. Under the bill, a donor may make an anatomical gift in any of the following ways:

- By authorizing a statement or symbol indicating that he or she has made an anatomical gift to be imprinted on his or her driver license or ID card.
- In a will.
- During a terminal illness or injury, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness.

The physician who attends the donor during the terminal illness or injury may not act as a recipient of the donor's communication to make an anatomical gift.

(The bill defines "disinterested witness" as a witness who is not a spouse, child, parent, sibling, grandchild, grandparent, or guardian of or other adult who exhibited special care and concern for the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to whom an anatomical gift could pass.)

An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

A person authorized to make an anatomical gift may do so by a document of gift signed by the person making it or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

("Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver license, ID card, or donor registry. "Sign" means that, with the present intent to authenticate or adopt a record, an individual either executes or adopts a tangible symbol, or attaches to or logically associates with the record an electronic symbol, sound, or process.)

A donor or other person authorized to make an anatomical gift under the bill also may make a gift by a donor card or other record signed by the donor or other person or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person physically is unable to sign a record, it may be signed by another person at the direction of the donor or other person and must be witnessed by two or more adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person. Additionally, the record must state that it has been signed and witnessed in this manner.

A document of gift does not need to be delivered during the donor's lifetime to be effective.

The revocation, suspension, expiration, or cancellation of a driver license or ID card

upon which an anatomical gift is indicated does not invalidate the gift.

Validity of Document of Gift

The bill specifies that a document of gift is valid if executed pursuant to any of the following:

- Part 101.
- The laws of the state or country where it is executed.
- The laws of the state or country where the person making the anatomical gift is domiciled, has a place of residence, or was a national at the time the document was executed.

If a document of gift is valid, the law of Michigan governs its interpretation. A person may presume that a document of gift or amendment of an anatomical gift is valid unless he or she knows that it was not executed validly or has been revoked.

The bill deleted a provision under which a document of gift executed in another state or in a foreign country and in accord with the laws of that state or country was valid as a document of gift in Michigan, even if it did not conform substantially to the form set forth in the Code.

Amendment to & Revocation of Gift

Previous Law. Previously, an anatomical gift made by will or by a document of gift other than a will was not revocable after the donor's death regardless of the expressed desires of the donor's next of kin who might have opposed the donation. If the will, card, or other document, or a copy, was delivered to a specified donee, the donor could amend or revoke the gift by any of the following methods:

- The execution and delivery to the donee of a signed statement.
- An oral statement made in the presence of two people and communicated to the donee.
- A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee.
- A signed card or document found on the donor's person or in the donor's effects.

Any document of gift that was not delivered to the donee could be revoked by the donor in the same manner, or by destruction, cancellation, or mutilation of the document and all executed copies of it. Any gift made by a will also could be amended or revoked in the manner provided for amendment or revocation of wills, or as provided above.

The bill deleted these provisions.

Enacted Provisions. Subject to other provisions in the bill, a donor or other person authorized to make an anatomical gift may amend or revoke the gift by any of the following means:

- A record signed by the donor, the other person authorized to make an anatomical gift, or another individual acting at the direction of the donor or other person if the donor or other person physically is unable to sign.
- A later-executed document of gift that amends or revokes a previous anatomical gift or portion of a gift, either expressly or by inconsistency.

A record signed by an individual acting at the direction of a donor or authorized other person who is unable to sign must be witnessed by two or more adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person. Additionally, the record must state that it has been signed and witnessed in this manner.

A donor or other person authorized to make an anatomical gift may revoke the gift by the destruction or cancellation of the document, or the portion of the document used to make the gift, with the intent to revoke the gift.

A donor may amend or revoke an anatomical gift that is not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness. A donor who makes an anatomical gift in a will may amend or revoke it in the manner provided for amendment or revocation of wills or as provided in the bill.

An anatomical gift by an authorized person may be amended or revoked orally or in a record by any member of a prior class who

is reasonably available. If more than one member of the prior class is reasonably available, the gift made by an authorized person may be amended or revoked as follows:

- Amended only if a majority of the reasonably available members agree to the amendment.
- Revoked only if a majority of the reasonably available members agree to the revocation or if they are equally divided as to whether to revoke the gift.

A revocation will be effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation. (The bill defines "technician" as an individual determined to be qualified to remove or process body parts by an appropriate organization that is licensed, accredited, or regulated under Federal or State law. The term includes an enucleator (someone who removes eyes or organs).)

Acceptance or Rejection of Gift

Previously, a donee could accept or reject an anatomical gift. If the donee accepted a gift of the entire body, the person with authority to direct and arrange for the funeral and burial or other disposition of the body under EPIC, subject to the terms of the gift, could authorize embalming and the use of the body in funeral services. If the gift were a physical part of the body, the donee, upon the donor's death and before embalming, had to have the part removed without unnecessary mutilation. Custody of the remainder of the body vested in the person with the authority to direct and arrange for the funeral and burial or disposition. The holder of a mortuary science license who acted pursuant to the directions of a person alleging to have that authority was relieved of any liability for the funeral and burial or other disposition. A mortuary science licensee could rely on the instructions and directions of any person alleging to be either a donee or a person authorized to donate a body or any physical part of a body. A licensee was not liable for removal of any physical part of a donated body.

The bill deleted all of these provisions.

Specified Donee & Designated Physician

Previously, a gift could be made to a specified or unspecified donee. If the donee was not specified, the attending physician could accept the gift as donee upon or following the donor's death. If a specified donee was not available at the time and place of death, the attending physician could accept the gift as donee in the absence of any expressed indication that the donor desired otherwise. An attending physician who became a donee could not participate in the procedures for removing or transplanting a physical part.

If a gift was made to a specified donee, the will, card, or other document, or an executed copy, could be delivered to the donee to expedite the appropriate procedures immediately after death. The document or copy could be deposited in any hospital, bank or storage facility, or registry office that accepted it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession had to produce the documents for examination.

A donor could designate in his or her will or other document of gift the physician who was to carry out the procedures necessary to effectuate the gift. In the absence of a designation or if the designee was not available, the donee or other person authorized to accept the gift could employ or authorize another physician.

The bill deleted these provisions.

Recipient of Anatomical Gift

Under the bill, an anatomical gift may be made to any of the following people named in the document of gift:

- A hospital; accredited medical school, dental school, college, or university; organ procurement organization (certified by the U.S. Secretary of Health and Human Services) or other appropriate person, for research or education.
- An individual designated by the person making the anatomical gift if the individual is the recipient of the body part.
- An eye bank or tissue bank.

If an anatomical gift to an individual cannot be transplanted into that person, the body part must pass to an eye bank, tissue bank, or organ procurement organization, as applicable, in the absence of an express, contrary indication by the person making the anatomical gift.

If an anatomical gift of one or more specific body parts or of all body parts is made in a document of gift that does not name a recipient but identifies the purpose for which the gift may be used, the following rules apply:

- If the body part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.
- If the body part is tissue and the gift is for transplantation or therapy, the gift passes to the appropriate tissue bank.
- If the body part is an organ and the gift is for transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.
- If the body part is an organ, an eye, or tissue and the gift is for research or education, the gift passes to the appropriate procurement organization.

If there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for those purposes, it may be used for research or education.

If an anatomical gift of one or more specific body parts is made in a document of gift that does not name a recipient and does not identify the gift's purpose, or if a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be used for transplantation, therapy, research, or education pursuant to the preceding provision and the rules described below.

For purposes of an anatomical gift that cannot be transplanted into a specified recipient, a gift for which no recipient or purpose is specified, or a document that specifies only a general intent to make a gift, the following rules apply:

- If the body part is an eye, the gift passes to the appropriate eye bank.
- If the body part is tissue, the gift passes to the appropriate tissue bank.
- If the body part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

An anatomical gift of an organ for transplantation or therapy, other than a gift designated for a specific person, passes to the organ procurement organization as custodian of the organ.

If an anatomical gift does not pass as set forth in the bill or the decedent's body or body part is not used for transplantation, therapy, research, or education, custody of the body or body part passes to the person under obligation to dispose of it.

A person may not accept an anatomical gift if he or she knows that it was not effectively made or if the person knows that the decedent made a refusal that was not revoked. For purposes of this provision, if a person knows that an anatomical gift was made on a document of gift, he or she is considered to know of any amendment or revocation or any refusal to make a gift on the same document of gift.

Nothing in Part 101 affects the allocation of organs for transplantation or therapy, except as otherwise provided in regard to an anatomical gift made to an individual designated by the person making the gift.

Refusal; Revocation; Limitation

Under the bill, a person may refuse to make an anatomical gift of his or her body or body part by any of the following means:

- A record signed by the individual or another individual acting at his or her direction if he or she is physically unable to sign.
- The individual's will, whether or not it is admitted to probate or invalidated after his or her death.
- Any form of communication made by the individual during his or her terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

A record signed by an individual other than the donor must be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the individual's request. Additionally, the record must state that it has been signed and witnessed in this manner.

An individual who makes a refusal may amend or revoke it by any of the following means:

- In the manner provided above for making a refusal.
- By subsequently making an anatomical gift that is inconsistent with the refusal.
- By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke it.

Except as otherwise provided for an unemancipated minor, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift bars all other people from making an anatomical gift of his or her body or body part.

Except as otherwise provided for an unemancipated minor and subject to provisions regarding the limitation of an anatomical gift, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or body part if he or she makes an anatomical gift or an amendment to an anatomical gift as provided in the bill.

A donor's revocation of an anatomical gift is not a refusal and does not bar another authorized person from making an anatomical gift.

If a person other than the donor makes an unrevoked anatomical gift of his or her body or body part or an amendment to an anatomical gift, another person may not make, amend, or revoke the gift.

A revocation of a gift by a person other than the donor does not bar another person from making a gift as provided in the bill.

In the absence of an express, contrary indication by the donor or other person

authorized to make an anatomical gift of a body part, a gift is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or other person.

In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift, a gift of a body part for one or more of the purposes set forth in the bill is not a limitation on the making of an anatomical gift of the body part for any of the other purposes.

If a donor who is an unemancipated minor dies, a parent who is reasonably available may revoke or amend an anatomical gift of the donor's body or body part. If an unemancipated minor who signs a refusal dies, a parent who is reasonably available may revoke the refusal.

Search for Document of Gift

Under the bill, as soon as practical after any necessary medical intervention or treatment, each of the following people must make a reasonable search of an individual whom he or she reasonably believes is dead or near death, for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

- A law enforcement officer, firefighter, paramedic, other emergency rescuer finding the individual, or medical examiner or his or her designee.
- If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival.

If a document of gift or a refusal to make an anatomical gift is located by the required search and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search immediately must send the document of gift or refusal to the hospital for documentation.

A person is not subject to criminal or civil liability for failing to discharge the duties imposed by these provisions but may be subject to administrative sanctions.

Record Search; Examination

Under the bill, upon or after an individual's death, a person in possession of a document of gift or a refusal with respect to the decedent must allow examination and copying of the document or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the decedent or by a person to whom the gift may pass.

When a hospital refers an individual at or near death to a procurement organization, the organization must make a reasonable search of the records of the Secretary of State and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether he or she has made an anatomical gift. A procurement organization must be allowed reasonable access to information in the records of the Secretary of State to ascertain whether an individual at or near death is a donor.

Previously, an anatomical gift authorized an examination necessary to assure medical acceptability of the gift for the intended purposes. The bill deleted this provision.

Under the bill, when a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a body part that is or may be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor, regardless of a prior decision to withhold or withdraw care (as described below). During the examination period, measures necessary to ensure the medical suitability of the body part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

Unless prohibited by law other than Part 101, at any time after a donor's death, the person to whom a body part will pass may conduct any reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

Unless prohibited by law other than Part 101, an examination may include an examination of all medical and dental

records or other sources of medical information pertaining to the donor or prospective donor, including those held by a medical examiner's office, correctional facility, physician's office, or other medical entity.

Upon the death of a minor who is a donor or has signed a refusal, unless a procurement organization knows that the minor is emancipated, the procurement organization must conduct a reasonable search for his or her parents and give them an opportunity to revoke or amend the anatomical gift or revoke the refusal.

Upon referral by a hospital, a procurement organization must make a reasonable search for any person listed in the bill who has priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person has been made, amended, or revoked, it promptly must advise the other person of all relevant information.

(The bill defines "prospective donor" as an individual who is dead or near death and has been determined by a procurement organization to have a body part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.)

Rights to Anatomical Gift

Previously, the rights of the donee created by an anatomical gift were paramount to the rights of others, subject to State laws prescribing powers and duties with respect to autopsies. The bill deleted this provision.

The bill provides that the rights of the person to whom a body part passes are superior to the rights of all others with respect to the body part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and Part 101, a person who accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of the remains in a funeral service. If the gift is of a body part, the person to whom the part passes, upon the death of the donor and before embalming, burial, or cremation, must cause the body part to be removed without unnecessary mutilation.

Attending Physician

Previously, the time of death had to be determined by a physician who attended the donor at the death or, if none, the physician who certified the death. The physician could not participate in the procedures for removing or transplanting a physical part. The bill deleted these provisions.

Under the bill, neither the physician who attends the decedent at death nor the physician who determines the time of death may participate in the procedures for removing or transplanting a body part from the decedent.

A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Eye Donation

Previously, under Part 101, in the absence of designation of a physician or surgeon by the donor or the donee of a decedent's eye or a physical part of an eye, or if the designated physician or surgeon was not readily available to excise the eye, a licensed physician or person who was certified by a State medical school could perform the operation and arrange for placement of the gift in the nearest eye bank. A State medical school could certify a person as qualified to perform the operation only after he or she had successfully completed a comprehensive course in eye enucleation organized and conducted by the school or a similar course offered by a nationally accredited medical school located in another state. The bill deleted these provisions.

Under Part 102, only an individual who is one of the following may surgically remove a human organ for transplantation, implantation, infusion, injection, or any other medical or scientific purposes:

- A licensed physician.
- An individual acting under the delegatory authority and supervision of a physician.
- For the purpose of surgically removing an eye or part of an eye, an individual certified by a State medical school.

Under the bill, this provision applies except as otherwise provided in Part 101. The bill

deleted the reference to the surgical removal of an eye or part of an eye.

Criminal Penalties

Under the bill, a person who for valuable consideration knowingly purchases or sells a body part for transplantation or therapy, if removal of the part from an individual is intended to occur after death, is guilty of a felony punishable by imprisonment for up to five years and/or a maximum fine of \$50,000.

A person may charge a reasonable amount, however, for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a body part.

A person who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift or refusal is guilty of a felony punishable by imprisonment for up to five years and/or a maximum fine of \$50,000.

Liability

Previously, a person, including a hospital, who acted in good faith in accord with the terms of Part 101 or with the anatomical gift laws of another state or a foreign country was not liable for damages in any civil action or subject to prosecution in any criminal proceeding for the act. The bill deleted this provision.

Under the bill, a person who acts in good faith in accord with the terms of Part 101 or with the anatomical gift laws of another state or a foreign country is not liable for damages in a civil or administrative action or subject to criminal prosecution. Neither the person making an anatomical gift nor his or her estate is liable for any injury or damage that results from the making or use of the gift.

Donor Registry

Under the bill, the organ procurement organization must establish or contract for the establishment of a donor registry. As provided in Public Act 222 of 1972 and the Michigan Vehicle Code, the Secretary of State must inquire of each applicant, licensee, or State identification card holder, in person or by mail, whether he or she

agrees to participate in a donor registry. The Secretary of State must maintain a record of an individual who indicates a willingness to have his or her name placed on the donor registry. The Secretary of State must maintain the registry in a manner that provides electronic access, including the transfer of data, to the organ procurement organization or its successor organization, tissue banks, and eye banks. The Secretary of State must administer the registry in a manner that complies with the provisions described below regarding access and personally identifiable information.

A donor registry under the bill must be accessible to a procurement organization to allow it to obtain the name, address, and date of birth of people on the registry to determine, at or near death of the donor or a prospective donor, whether he or she has made an anatomical gift. Additionally, it must provide electronic access, including the transfer of data for purposes of determining whether an individual has made an anatomical gift, on a seven-day-a-week, 24-hour-a-day basis at no cost to the procurement organization.

Personally identifiable information on a donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person who made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether he or she has made, amended, or revoked an anatomical gift.

These provisions do not prohibit any person from creating or maintaining a registry that is not established by or under contract with this State. Such a registry must comply with the requirements regarding access and personally identifiable information.

Within 30 days of its establishment, the registry must notify the organ procurement organization and give it full access to the registry's records of anatomical gifts and amendments to or revocations of anatomical gifts.

Declaration/Advance Directive

Under the bill, if a prospective donor has a declaration or advance health care directive or is enrolled in a hospice program, and the

terms of the declaration, directive, or enrollment and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a body part for transplantation or therapy, the prospective donor, his or her attending physician, and, if appropriate, the hospice medical director must confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under his or her declaration, directive, or hospice enrollment, or, if there is none or the agent is not reasonably available, another person authorized by law other than Part 101 to make health care decisions on behalf of the prospective donor, must act for the donor to resolve the conflict. The authorized parties must attempt to resolve the conflict as expeditiously as possible. Authorized parties may obtain information relevant to the resolution of the conflict from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor. Before resolution of the conflict, measures necessary to ensure the medical suitability of the body part are permissible if they are not contraindicated by appropriate end-of-life care as determined by the prospective donor's stated wishes, by a written advance health care directive, or, if appropriate, by the hospice medical director.

(The bill defines "advance health care directive" as a power of attorney for health care or a record signed or authorized by a prospective donor containing his or her direction concerning a health care decision for him or her. The term includes a durable power of attorney and designation of patient advocate under the EPIC. "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.)

Hospitals

The bill requires each hospital in Michigan to enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

The bill repealed Section 10102a, which required an individual designated by the chief executive officer (CEO) of a hospital, at or near the death of a patient whose body,

according to accepted medical standards, was suitable for donation or for the donation of physical parts, to request one of the individuals specified under the Code in order of priority to consent to the anatomical gift. The individual could not make a request if any of the various conditions existed.

Each hospital had to maintain a hospital organ donation log sheet, which had to include information specified in the Code. After making a request for a gift or after the death of a patient or decedent who made a gift, the individual designated by the hospital CEO had to complete the log sheet. A summary of the information contained in the log sheets annually had to be transmitted by each hospital to the Department of Community Health (DCH).

A gift made pursuant to a request under these provisions had to be executed pursuant to Part 101.

The CEO of each hospital had to develop and implement a policy regarding requests for anatomical gifts. At a minimum, the policy had to provide for all of the following:

- The designation of individuals who would make requests.
- That if a patient's religious preference was known, a clergy of that denomination would, if possible, be made available upon request to the individuals to whom a request for an anatomical gift was made.
- The development of a support system that facilitated the making of requests.
- The maintenance of the log sheet.

If an individual had made a gift via a document of gift, it was not revocable after his or her death and the individual designated by the hospital CEO was not required to make a request for consent unless the decedent had revoked the gift as prescribed in the Code.

Administrative Sanctions

Under the Code, after notice of intent to an applicant or licensee to deny, limit, suspend, or revoke the applicant's or licensee's license or certification and an opportunity for a hearing, the DCH may deny, limit, suspend, or revoke the license or certification or impose an administrative fine on a licensee if certain grounds exist. Under

the bill, these include failure to comply with Section 10115. That section, under the bill, requires each hospital to enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. Previously, the grounds for sanctions included failure to comply with Section 10102a(7), which required a hospital CEO to develop and implement a policy regarding requests for consent to the gift of all or any part of a decedent's body.

Uniformity of Law

Previously, Part 101 specified that it was subject to Michigan laws prescribing powers and duties with respect to autopsies. Part 101 had to be construed to effectuate its general purpose to make uniform of the law of those states that enacted it. The bill deleted these provisions.

The bill requires that, in applying and construing Part 101, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Electronic Signatures

The bill provides that Part 101 modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC 7001(a), or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

(Section 7001(a) provides that, notwithstanding any statute, regulation, or other rule of law with respect to any transaction in or affecting interstate or foreign commerce, a signature, contract, or other record relating to the transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and a contract relating to the transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

Section 7003(b) provides that the provisions of Section 7001 do not apply to court orders or notices, or official court documents required to be executed in connection with court proceedings, or specified notices.)

Senate Bill 713

The bill includes in the sentencing guidelines purchasing or selling a body part of a deceased individual for transplantation or therapy, and falsifying, concealing, or defacing a document of anatomical gift for financial gain. These offenses are Class E felonies against public order with a five-year statutory maximum.

House Bill 4941

Required Information

Public Act 222 of 1972 requires a State ID card to contain certain information, including an image of the applicant. Under the bill, the image must be a digital photographic image, and the card's expiration date also must be included. Additionally, the bill requires that the card contain physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

Use of Information

The bill requires the Secretary of State (SOS) to retain and use a person's digital photographic image and signature only for programs administered by the SOS as specifically authorized by law. Previously, this provision was permissive, and did not refer to specific authorization by law.

Previously, the SOS could not use a person's image unless the person granted written permission to the SOS or specific enabling legislation permitting the use was enacted into law. A law enforcement agency had access to any information retained by the SOS. The information could be used for any law enforcement purpose unless otherwise prohibited by law. The Michigan State Police (MSP) had to give the SOS updated lists of people required under the Sex Offenders Registration Act (SORA) to maintain a valid driver license or State ID card. The SOS had to make images of those people available to the MSP as provided in SORA. The bill deleted these provisions. Instead, the bill provides that a person's digital photographic image or signature may be used only as follows:

-- By a Federal, State, or local governmental agency for a law enforcement purpose authorized by law.

- By the SOS for a use specifically authorized by law.
- As necessary to comply with a law of Michigan or the United States.

Additionally, the bill requires the SOS to forward to the MSP the images of people required to be registered under SORA when the MSP gives the SOS an updated list of those people.

State ID Card Information Format

The bill requires a State ID card to contain information appearing in electronic or machine readable codes needed to conduct a transaction with the SOS. The information is limited to the person's ID card number, birth date, expiration date, full legal name, date of transaction, gender, address, state of issuance, and other information necessary for use with electronic devices, machine readers, or automatic teller machines. Previously, a State ID card was permitted to contain information in electronic or machine readable codes; it was limited to the information listed in the bill but could not contain the person's name, address, driving record, or other personal identifier.

Expiration Date

Previously, an original or renewal ID card expired on the person's birthday in the fourth year following the date of issuance. Under the bill, the card expires on the earlier of that date or the date the person is no longer considered to be legally present in the United States.

House Bill 4945

Under the Estates and Protected Individuals Code, an individual who is at least 18 years old and of sound mind at the time a patient advocate designation is made may designate another individual to exercise powers concerning care, custody, and medical or mental health treatment decisions for him or her. An individual making a patient advocate designation may include in it the authority for the designated individual to make an anatomical gift of all or part of the individual's body. The bill specifies that the authority regarding an anatomical gift may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of

means necessary ensure the medical suitability of the anatomical gift.

Under EPIC, a patient advocate designation may include a statement of the patient's desires on care, custody, and medical and/or mental health treatment, as well as a statement of the patient's desires on the making of an anatomical gift. Under the bill, the statement also may include a statement of the patient's desires regarding the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift. The bill also allows the patient to authorize the patient advocate to exercise one or more powers concerning the resolution of such a conflict.

MCL 257.307 & 257.310 (S.B. 712)
777.13n (S.B. 713)
52.209 (S.B. 714)
333.10101 et al. (H.B. 4940)
28.292 (H.B. 4941)
700.3206 et al. (H.B. 4945)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills reflect revisions to the Uniform Anatomical Gift Act (UAGA) promulgated by NCCUSL in 2006. The original 1968 UAGA was promptly and uniformly enacted in every jurisdiction, according to NCCUSL. That version created the power to donate organs, eyes, and tissue, in an immediate gift to a known donee or to any donee who might need an organ to survive. In 1987, NCCUSL revised the UAGA to address changes in circumstances and in practice. Only 26 states enacted the 1987 version, however, resulting in nonuniformity among the states. Subsequent changes in each state over the years produced even more disparity, and neither the 1967 version nor the 1987 revision recognized the system of organ procurement that had developed partly under Federal law, and in response to advances in medical technology. As a result, the 2006 UAGA was promulgated to resolve any perceived inconsistencies.

Michigan enacted the original UAGA in 1969. Amendments enacted in 1986 added the sections requiring hospital CEOs to request consent from authorized people for an anatomical donation, and allowing a donee to accept or reject a gift. By adopting the most recent updates to the uniform law, this legislation will increase the number of organ and tissue donors and facilitate timely transplantation. Speed is critical in preparing and transplanting organs, especially when they are transported across state lines. Assessment and compliance with varying state laws can cause delays. The adoption of the 2006 uniform law will improve the efficiency of the transplant process.

Additionally, House Bill 4940 improves protection for the rights of individuals by expanding the list of those who may give consent for a donation; expressly declaring the rights of all parties in the donation process; and establishing a mechanism by which a person can refuse to donate. The package also addresses the issues of potential donors with advance directives or under hospice care. All of these changes will help ensure that a decedent's wishes are followed and increase the number of organs and tissues available for transplant.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 712 & 714

The bills will have no fiscal impact on State or local government.

House Bill 4940 & Senate Bill 713

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of the new offenses. To the extent that the bills result in increased incarceration time, local governments will incur increased costs of incarceration in local facilities, which vary by county. The State will incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue will benefit public libraries.

House Bills 4941 & 4945

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco
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David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.