

SFA

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

RECEIVED

DEC 08 1987

Mich. State Law Library

Senate Bill 481 (as reported without amendment)

Sponsor: Senator Lana Pollack

Committee: Health Policy

Date Completed: 11-12-87

RATIONALE

Until March 29, 1985, the Public Health Code addressed the procurement, processing, distribution, and use of blood and human tissue. The inclusion of human tissue in the Code protected the acquisition and distribution of such tissues as corneas, bones, or organs from expressed, implied, or other warranties. The statute thus limited the potential liability of persons involved in these activities by protecting them from warranty claims, although a person would be liable for negligence or willful misconduct. The statute was amended by Public Act 390 of 1984, which took effect March 29, 1985, to eliminate the procurement, processing, distribution, and use of human tissue from classification as a service, rather than a sale. Thus, the procurement, processing, and distribution of human tissue is considered a sale of a product, making that action subject to certain warranties. Some people believe that warranty claims under the Uniform Commercial Code and product liability actions could develop. The Code should be amended, some contend, to remove these transplantation procedures from liability under the Uniform Commercial Code and to redefine transplantation procedures as a service and not a sale.

CONTENT

The bill would amend the Public Health Code to specify that the procurement, processing, distribution, and use of human tissues, including but not limited to corneas, bones, organs, or parts of organs for injection, transfusion, or transplantation into a human body, would be considered a service, not a sale, whether or not remuneration was paid. This provision already is in the Code but applies only to whole blood, blood plasma, blood products, blood derivatives, and artificial tissues.

The bill also specifies that, except pursuant to these provisions, a person who knowingly acquired, received, or otherwise transferred a human organ or a part of a human organ for "valuable consideration" would be guilty of a felony. "Valuable consideration" would not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the medical expenses and expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation. (These would replace current language that makes it a felony for a person knowingly to buy or sell a human body or a part of a human body, permits the reimbursement of actual expenses and reasonable costs, and specifies what "part of a human body" does not include.)

In addition, the bill provides that the Department of Public Health could promulgate rules to specify human organs in addition to the human organs listed in the bill. "Human

organ" would mean the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, skin, cartilage, dura mater, ligaments, tendons, fascia, pituitary gland, and middle ear structures and any other human organ specified by the Department. "Human organ" would not include whole blood, blood plasma, blood products, blood derivatives, other self-replicating body fluids, or human hair.

MCL 333.9121 and 333.10204

FISCAL IMPACT

The bill would have no impact on State or local government.

ARGUMENTS**Supporting Argument**

Public Act 390 of 1984 eliminated human tissues from the definition of a service in order to create a provision for the sale of these tissues. While the goal may have been to prohibit the development of a black market in the sale of human body parts, this action actually may have made it more difficult for tissue banks and other kinds of procurement agencies to operate or expand their operations because, under the Code, persons involved in the procurement, processing, and distribution of human tissues are susceptible to a wide range of warranty and product liability actions. The Code currently treats the procurement, processing, and distribution of blood, for example, as a service and an express, implied, or other warranty does not apply to this service. Kidneys, livers, hearts, corneas, and other human tissues specified in the bill are not products and should not be treated as such. Furthermore, the bill would retain current language under which persons are liable for their own negligence or willful misconduct in performing this service.

Supporting Argument

Language in the Public Health Code prohibits the buying and selling of human body parts. On the other hand, Federal law prohibits the acquisition, receipt, or transfer of human organs for "valuable consideration", which does not include "reasonable payments" for the removal, transportation, processing, preservation, quality control, and storage of a human organ. Michigan law does allow for "reasonable costs" associated only with removal, storage, and transportation of human body parts. Thus, Michigan's law appears to be more limiting than the Federal law. Revising language in the Code to parallel Federal law would benefit tissue banks and other agencies engaged in transplant activities.

S.B. 481 (11-12-87)

Supporting Argument

The bill would allow for the payment of expenses associated with the removal, transportation, implantation, and other specified procedures in connection with the donation of a human organ. The bill, however, would not permit profiteering to occur as a result of the donation. If the bill were enacted, Michigan could avoid situations that have occurred in other states where persons have attempted to out bid each other in order to be selected as an organ transplant recipient. Transplantation would depend on whether the recipient and organ matched medically and not on the dollar amount of a payment.

Legislative Analyst: L. Arasim

Fiscal Analyst: P. Graham

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.