



SENATE BILL No. 28

January 13, 1993, Introduced by Senator EHLERS and referred to the Committee on Health Policy.

A bill to amend sections 10102 and 10104 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," being sections 333.10102 and 333.10104 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 10102 and 10104 of Act No. 368 of the
2 Public Acts of 1978, being sections 333.10102 and 333.10104 of
3 the Michigan Compiled Laws, are amended to read as follows:

4 Sec. 10102. (1) An individual of sound mind and 18 years
5 of age or more may ~~give~~ MAKE A GIFT OF all or ~~any~~ A physical
6 part of ~~the individual's~~ HIS OR HER body for ~~any~~ A purpose
7 specified in section 10103, ~~the gift to take effect~~ EFFECTIVE
8 upon THAT INDIVIDUAL'S death.

1 (2) ~~Any of the following persons, in order of priority~~
 2 ~~stated, when persons in prior classes are not available at the~~
 3 ~~time of death, and in the absence of actual notice of contrary~~
 4 ~~indications by the decedent or actual notice of opposition by a~~
 5 ~~member of the same or a prior class,~~ UPON OR IMMEDIATELY BEFORE
 6 THE DEATH OF AN INDIVIDUAL WHO HAS NOT MADE A GIFT OF ALL OR A
 7 PHYSICAL PART OF HIS OR HER BODY UNDER THIS PART, AN INDIVIDUAL
 8 HAVING THE FOLLOWING RELATIONSHIP TO THAT INDIVIDUAL may, ~~give~~
 9 IN THE FOLLOWING ORDER OF PRIORITY AND SUBJECT TO SUBSECTION (3),
 10 MAKE A GIFT OF all or ~~any~~ A physical part of ~~the decedent's~~
 11 THE DECEDENT INDIVIDUAL'S body for ~~any~~ A purpose specified in
 12 section 10103:

- 13 (a) The spouse.
- 14 (b) An adult son or daughter.
- 15 (c) Either parent.
- 16 (d) An adult brother or sister.
- 17 (e) A guardian of the person of the decedent at the time of
- 18 the death.
- 19 (f) Any other ~~person~~ INDIVIDUAL authorized or under obli-
- 20 gation to dispose of the body.

21 (3) AN INDIVIDUAL DESCRIBED IN SUBSECTION (2) MAY MAKE A
 22 GIFT OF ALL OR A PHYSICAL PART OF A DECEDENT'S BODY PURSUANT TO
 23 THIS PART IF EACH OF THE FOLLOWING CIRCUMSTANCES EXISTS:

- 24 (A) NO OTHER PERSON HAVING GREATER PRIORITY TO MAKE THE GIFT
- 25 IS AVAILABLE OR CAPABLE OF MAKING THE DECISION AT THE TIME OF THE
- 26 DECEDENT'S DEATH.

1 (B) THE PERSON MAKING THE GIFT HAS NOT RECEIVED ACTUAL
2 NOTICE THAT THE DECEDENT HAD EXPRESSED AN UNWILLINGNESS TO MAKE
3 THE GIFT.

4 (C) THE PERSON MAKING THE GIFT HAS NOT RECEIVED ACTUAL
5 NOTICE THAT AN INDIVIDUAL HAVING EQUAL OR GREATER PRIORITY UNDER
6 SUBSECTION (2) OPPOSES THE MAKING OF THE GIFT.

7 (4) ~~-(3)-~~ If ~~the donee~~ A PROPOSED RECIPIENT OF A GIFT has
8 actual notice ~~of contrary indications by~~ THAT the decedent HAD
9 EXPRESSED AN UNWILLINGNESS TO MAKE THE GIFT, or that ~~a gift by a~~
10 ~~member of a class is opposed by a member of the same or a prior~~
11 ~~class, the donee~~ AN INDIVIDUAL HAVING PRIORITY EQUAL TO OR
12 GREATER THAN THAT OF THE INDIVIDUAL MAKING THE GIFT UNDER
13 SUBSECTION (2) OPPOSES THE MAKING OF THE GIFT, THE PROPOSED GIFT
14 RECIPIENT shall not accept the gift. ~~The persons authorized by~~
15 ~~subsection (2) may make the gift after or immediately before~~
16 ~~death.~~

17 (5) ~~-(4)-~~ A gift of all or a physical part of a body autho-
18 rizes any examination necessary to assure medical acceptability
19 of the gift for the purposes intended.

20 (6) ~~-(5)-~~ The rights of the ~~donee~~ RECIPIENT created by the
21 gift are paramount to the rights of others except as provided by
22 section 10108(4).

23 Sec. 10104. (1) A gift of all or a physical part of the
24 body under section 10102(1) may be made by will. The gift
25 becomes effective upon the death of the testator without waiting
26 for probate. If the will is not probated, or if it is declared
27 invalid for testamentary purposes, the gift, to the extent that

1 it has been acted upon in good faith, is nevertheless valid and
2 effective.

3 (2) A gift of all or a physical part of the body under sec-
4 tion 10102(1) may also be made by document other than a will.
5 The gift becomes effective upon the death of the donor. ~~The~~
6 SUBJECT TO SUBSECTIONS (3) AND (4), THE document ~~, which may be~~
7 ~~a card designed to be carried on the person, shall be signed by~~
8 ~~the donor in the presence of 2 witnesses who shall sign the docu-~~
9 ~~ment in the donor's presence. If the donor cannot sign, the doc-~~
10 ~~ument may be signed for the donor at his or her direction and in~~
11 ~~his or her presence in the presence of 2 witnesses who shall sign~~
12 ~~the document in the donor's presence. Delivery of the document~~
13 ~~of gift during the donor's lifetime is not necessary to make the~~
14 ~~gift valid.~~ MAY BE ANY OF THE FOLLOWING:

15 (A) A PERSONAL IDENTIFICATION CARD ISSUED TO THE DONOR BY
16 THE SECRETARY OF STATE PURSUANT TO ACT NO. 222 OF THE PUBLIC ACTS
17 OF 1972, BEING SECTIONS 28.291 TO 28.295 OF THE MICHIGAN COMPILED
18 LAWS, THAT BEARS ON ITS FACE EACH OF THE FOLLOWING, SUBJECT TO
19 LIMITATIONS, CONDITIONS, OR ADDITIONAL TERMS, IF ANY, SET FORTH
20 ON THE REVERSE SIDE:

21 (i) THE DONOR'S MARK IN A BOX LABELED "YES" FOLLOWING THE
22 QUESTION "DO YOU WISH TO DONATE ORGANS AND TISSUE IN THE EVENT OF
23 YOUR DEATH?".

24 (ii) THE DONOR'S SIGNATURE.

25 (B) A MOTOR VEHICLE OPERATOR'S OR CHAUFFEUR'S LICENSE ISSUED
26 TO THE DONOR BY THE SECRETARY OF STATE PURSUANT TO THE MICHIGAN
27 VEHICLE CODE, ACT NO. 300 OF THE PUBLIC ACTS OF 1949, BEING

1 SECTIONS 257.1 TO 257.923 OF THE MICHIGAN COMPILED LAWS, THAT
 2 BEARS ON ITS FACE EACH OF THE FOLLOWING, SUBJECT TO LIMITATIONS,
 3 CONDITIONS, OR ADDITIONAL TERMS, IF ANY, SET FORTH ON THE REVERSE
 4 SIDE:

5 (i) THE DONOR'S MARK IN A BOX LABELED "YES" FOLLOWING THE
 6 QUESTION "DO YOU WISH TO DONATE ORGANS AND TISSUE IN THE EVENT OF
 7 YOUR DEATH?".

8 (ii) THE DONOR'S SIGNATURE.

9 (C) A document ~~which~~ THAT conforms substantially TO
 10 SUBDIVISION (A) OR (B) OR to the following form: ~~is sufficient~~
 11 ~~for the purposes of this subsection:~~

12 Uniform Donor Card

13 of.....

14 Print or type name of donor

15 In the hope that I may help others, I hereby make this anatomical
 16 gift if medically acceptable, to take effect upon my death. The
 17 words and marks below indicate my desires.

18 I give: (a) any needed organs or physical parts

19 (b) only the following organs or physical parts

20

21 Specify the organ(s) or physical part(s)

22 For the purposes of transplantation, therapy, medical research or
 23 education;

24 (c) my body for anatomical study if needed.

25 Limitations or special wishes, if any: _____

26 Signed by the donor and the following 2 witnesses in the presence
 27 of each other:

28

29 _____
 Signature of donor

_____ Date of birth of donor

30

31 _____
 Date signed

_____ City and state

32

33 _____
 Witness

_____ Witness

34 (3) A TERM OR STATEMENT SIGNED BY A PERSON AND ATTACHED TO

35 THE REVERSE SIDE OF A PERSONAL IDENTIFICATION CARD OR MOTOR

1 VEHICLE OPERATOR'S OR CHAUFFEUR'S LICENSE ISSUED TO THAT PERSON
2 SUPERSEDES AN INCONSISTENT TERM OR STATEMENT APPEARING ON THE
3 FACE OF THE CARD OR LICENSE.

4 (4) IF A PERSON DOES NOT SPECIFY A GIFT OF HIS OR HER ENTIRE
5 BODY ON THE REVERSE SIDE OF A LICENSE OR CARD DESCRIBED IN SUB-
6 SECTION (2), THE GIFT IS LIMITED TO PHYSICAL PARTS OF THE BODY,
7 AND DOES NOT INCLUDE THAT PERSON'S ENTIRE BODY.

8 (5) ~~-(3)-~~ The gift may be made to a specified OR UNSPECIFIED
9 donee. ~~or without specifying a donee.~~ If the ~~latter~~ DONEE IS
10 NOT SPECIFIED, ~~the gift may be accepted by~~ the attending physi-
11 cian MAY ACCEPT THE GIFT as donee upon or following death. If
12 the gift is made to a specified donee who is not available at the
13 time and place of death, the attending physician MAY, upon or
14 following death, AND in the absence of any expressed indication
15 that the donor desired otherwise, ~~may~~ accept the gift as
16 donee. The physician who becomes a donee under this subsection
17 shall not participate in the procedures for removing or trans-
18 planting a physical part.

19 (6) ~~-(4)-~~ Notwithstanding section 10108(4), the donor may
20 designate in his or her will, card, or other document of gift the
21 surgeon or physician to carry out ~~the appropriate~~ procedures
22 NECESSARY TO EFFECTUATE THE GIFT. In the absence of a designa-
23 tion or if the designee is not available, the donee or other
24 person authorized to accept the gift may employ or authorize any
25 surgeon or physician for the purpose OF EFFECTUATING THE GIFT.

26 (7) A DONOR UNABLE TO SIGN A GIFT DOCUMENT MAY DIRECT
27 ANOTHER PERSON TO SIGN THAT DOCUMENT ON HIS OR HER BEHALF, IN HIS

1 OR HER PRESENCE, AND IN THE PRESENCE OF 2 WITNESSES. THE 2
2 WITNESSES SHALL ALSO SIGN THE DOCUMENT IN THE DONOR'S PRESENCE.

3 (8) ~~—(5)—~~ Any gift by a person designated in section
4 10102(2) shall be made by a document signed by the person or made
5 by the person's telegraphic, recorded telephonic, or other
6 recorded message.

7 (9) ~~—(6)—~~ A document of gift executed in another state or
8 foreign country and in accord with the laws of that state or
9 country is valid as a document of gift in this state, although
10 the document does not conform substantially to the form set forth
11 in subsection (2).

12 Section 2. This amendatory act shall not take effect unless
13 all of the following bills of the 87th Legislature are enacted
14 into law:

15 (a) Senate Bill No. 27.

16

17 (b) Senate Bill No. 29.

18