

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 381 (as enrolled)
Sponsor: Senator Leon Stille
Senate Committee: Health Policy
First House Committee: Health Policy
Second House Committee: Criminal Law and Corrections

PUBLIC ACT 62 of 1999

Date Completed: 8-2-99

RATIONALE

In October 1997, Jack Kevorkian, who reportedly has been in attendance at the suicide of over 100 people, held a news conference to announce his plan to harvest the organs of assisted-suicide patients for use in transplants. During the 1998 summer, it was reported that Kevorkian, on June 7, 1998, attended the death of a 45-year-old quadriplegic from Las Vegas. At the death the man's kidneys were removed and offered for transplant by Kevorkian. Evidently, though Kevorkian's lawyer's office and hospitals in the Detroit area received numerous inquiries about the kidneys from persons waiting for transplants, none of the hospitals was willing to accept the kidneys. Medical authorities were reported as saying that Federal transplant regulations provide that organs for transplant may be removed only in a hospital setting under controlled, sterile conditions. Also, the organs are supposed to be documented and entered into a national organ donation database.

Under the Public Health Code, it is a felony for a person knowingly to receive, acquire, or otherwise transfer a human organ or part of an organ for valuable consideration for any purpose, including but not limited to, transplantation, implantation, infusion, injection, or other medical or scientific purpose. (This prohibition does not apply to the removal and use of human corneas or pituitary glands as provided in the Code; to anatomical gifts made under the Uniform Anatomical Gift Act; or to the acquisition or distribution of bodies or parts designated for scientific uses and allocated to hospitals and educational institutions for use in medical instruction or other health sciences.) Some people believe that in addition to this restriction, to ensure that organ transplant procedures are performed in a safe and ethical manner, the Code should specify who is allowed to remove human organs for transplantation, and where those surgeries may be performed.

CONTENT

The bill amended the Public Health Code to provide that an individual who surgically removes a human

organ for transplantation, implantation, infusion, injection, or any other medical or scientific purpose must perform the surgery only in a licensed hospital, or another facility approved by the Director of the Department of Consumer and Industry Services. The Director may promulgate rules to designate one or more approved facilities.

Further, the bill requires an individual who surgically removes a human organ consisting of tissue, a cornea, or a whole eye for transplantation, infusion, implantation, injection, or any other medical or scientific purpose to perform the surgery only in a licensed hospital; a facility approved by the Director; a mortuary that is part of a funeral establishment owned or operated by the holder of a license for the practice of mortuary science; or a morgue or a facility operated by an appointed county medical examiner.

A person who violates the bill will be guilty of a felony. The bill does not apply to a licensed physician who performs a biopsy or the routine removal of human tissue from a patient, in the physician's private practice office or other licensed health facility, for the diagnosis or treatment of that patient and not for purposes of transplantation, implantation, infusion, or injection.

The bill will take effect September 1, 1999.

The bill was tie-barred to House Bill 4025 (Public Act 60 of 1999), which amended the Public Health Code to make it a felony for a person surgically to remove a human organ for transplantation or other purposes, unless the person is a licensed or certified health professional as specified in the bill. (In addition, House Bill 4466 (Public Act 61 of 1999), amended the Code of Criminal Procedure to include violations of Senate Bill 381 and House Bill 4025 in the Code's sentencing guidelines. The violations are Class F offenses against public safety, subject to a maximum term of imprisonment of four years.)

MCL 333.10205

ARGUMENTS

Fiscal Analyst: K. Firestone

(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

According to newspaper articles, Jack Kevorkian's proposal to harvest organs was widely criticized by the medical community as being ethically unacceptable, as well as medically unfeasible because it would not meet the accepted standards for transplantation of human organs. Many people outside the medical community also believe that unregulated organ removal is intolerable. Every attempt should be made to eliminate the possibility, or the appearance of the possibility, that the organs of those who end their lives in an assisted-suicide setting may be harvested and offered for transplant by those who attend the suicide, or that organs will be harvested under other unconventional circumstances.

Organ transplant procedures have saved, extended, and enhanced the quality of life of thousands of patients, and offer hope to thousands of others who live every day with pain and/or impending death. Such complex procedures, however, are highly unsafe unless conducted under strict medical protocols during both extraction and implantation. Organ harvesting and transplant must be performed only by trained professionals operating in an appropriate, legitimate setting. The bill, in conjunction with House Bill 4025, specifies who may and who may not remove organs for transplant, and the facilities in which removals may be performed. By prescribing these standards, and making a violation a felony, the bills will discourage the practice of illegitimate organ harvesting, as well as reduce the potential for profiteering in organ harvesting. At the same time, the bills will do nothing to reduce the incidence of legitimate organ removal for use in saving lives.

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bill 381 will have an indeterminate fiscal impact on State government.

There are no data to indicate how many people will be convicted of removing human organs in locations not authorized in the bill. The bill establishes the crime as a felony, which carries a maximum sentence of four years in prison and/or a fine of \$1,000. In this bill, only a maximum sentence is established. Assuming an offender will be sentenced to a minimum term of incarceration that is two-thirds of the maximum sentence, or 32 months, the cost of incarceration for this crime, assuming one offender a year is convicted, will be \$59,900.

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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.