

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4025 (Substitute S-1 as reported)
House Bill 4466 (Substitute H-2 as reported without amendment)
Sponsor: Representative Andrew Rickner (H.B. 4025)
Representative Alan Sanborn (H.B. 4466)
House Committee: Criminal Law and Corrections
Senate Committee: Health Policy (H.B. 4025)
Judiciary (H.B. 4466)

Date Completed: 5-24-99

RATIONALE

In October 1997, Jack Kevorkian, who reportedly attended 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. Last summer, it was reported that Kevorkian, on June 7, 1998, attended the death of a 45-year-old quadriplegic from Las Vegas. The man's kidneys then 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, under Federal transplant regulations, 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 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 would be allowed to remove human organs for transplantation and where organs could be removed.

CONTENT

House Bill 4025 (S-1) would amend the Public Health Code to specify the persons who could surgically remove human organs. **House Bill**

4466 (H-2) would amend the Code of Criminal Procedure to include in the sentencing guidelines provisions new felonies proposed by House Bill 4025 and Senate Bill 381 pertaining to the removal of human organs. Both bills are tie-barred to Senate Bill 381. As passed by the House, Senate Bill 381 (H-1) would amend the Public Health Code to make it a felony for an individual to remove a human organ for transplantation in any place other than those facilities specified in the bill.

House Bill 4025 (S-1)

The bill provides that the surgical removal of a human organ for transplantation, implantation, infusion, injection, or any other medical or scientific purpose could be performed only by the following persons:

- A physician.
- A licensed health professional, medical student, or student in an approved physician's assistant training program, acting under the delegatory authority and supervision of a physician, but not an individual whose license had been suspended.
- An individual residing in another state, who was authorized to practice allopathic medicine or osteopathic medicine and surgery in that state, and who was called into Michigan by a physician licensed in Michigan to remove surgically one or more of the following for transport back to the other state: heart; liver; lung; pancreas; kidney; all or part of an intestine; and any other human organ specified by rule.
- A person certified by a State medical school as qualified to perform eye removal, who could surgically remove only a human eye or a physical part of an eye.

Further, the bill would allow certain health professional students to remove certain organs from a deceased person. Currently, a task that requires the use of a surgical instrument may be delegated by

a physician only to a licensed health professional. This provision does not apply if the unlicensed individual is a medical or osteopathic student, or is enrolled in a physician's assistant training program and the individual is under the direct supervision of a licensed physician who is physically present during the procedure; or if the unlicensed individual is performing acupuncture. The bill also would allow a medical student or a student in a physician's assistant training program, under the delegatory authority and supervision of a physician, surgically to remove bone, skin, blood vessels, cartilage, dura mater, ligaments, tendons, pericardial tissue, or heart valves from a deceased person for transplantation or other medical or scientific purpose, and to perform acupuncture. A person who violated the bill's provisions would be guilty of a felony.

The bill would take effect September 1, 1999.

House Bill 4466 (H-2)

The bill provides that removal of a human organ by an unauthorized individual would be categorized as a Class F offense against public safety, with a statutory maximum sentence of four years. Removal of a human organ in an unapproved facility also would be a Class F offense against public safety, with a statutory maximum sentence of four years.

The bill is tie-barred to House Bill 4025, as well as Senate Bill 381.

MCL 333.10204 (H.B. 4025)
777.13 (H.B. 4466)

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

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. House Bill 4025 (S-1), in conjunction with Senate Bill 381, specifies who and who could not remove organs for transplant, and the facilities in which removals could be performed. By prescribing these standards, and making a violation a felony, the bills would discourage the practice of illegitimate organ harvesting, as well as reduce the potential for profiteering in organ harvesting. At the same time, the bills would do nothing to reduce the incidence of legitimate organ removal for use in saving lives.

Supporting Argument

House Bill 4466 (H-2) would place into sentencing guideline provisions the new felonies that would be created in House Bill 4025 (S-1) and Senate Bill 381 (H-1), thus establishing minimum sentencing ranges for the violations.

Legislative Analyst: G. Towne

FISCAL IMPACT

House Bill 4025 (S-1)

The bill would have an indeterminate fiscal impact on State and local government. It appears that there were no convictions in 1997 for acquiring, receiving, or otherwise transferring a human organ as currently prohibited. There are no data to indicate how many people could be convicted under the bill, which would create a separate offense depending upon an individual's professional qualifications. A felony has a maximum sentence of four years and/or a fine of \$2,000, if no other penalty is specified.

House Bill 4466 (H-2)

The bill would have an indeterminate fiscal impact on State and local government. To the extent that certain offenses are enacted by the Legislature after the enactment of sentencing guidelines, the fiscal impact of the additions will be based on changes in prison and jail population. Estimates of prison and jail population impact are not available at the present time.

Fiscal Analyst: K. Firestone

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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.