

HOUSE BILL No. 4383

March 9, 1999, Introduced by Reps. Martinez, Brater, Schauer, LaForge, Dennis, Baird, Bogardus, Jacobs and Minore and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 10102 and 10104 (MCL 333.10102 and
333.10104).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6 (2) ~~Any of the following persons, in order of priority~~
7 ~~stated, when persons in prior classes are not available at the~~
8 ~~time of death, and in the absence of actual notice of contrary~~
9 ~~indications by the decedent or actual notice of opposition by a~~
10 ~~member of the same or a prior class,~~ UPON OR IMMEDIATELY BEFORE

1 THE DEATH OF AN INDIVIDUAL WHO HAS NOT MADE A GIFT OF ALL OR A
2 PHYSICAL PART OF HIS OR HER BODY UNDER THIS PART, AN INDIVIDUAL
3 HAVING THE FOLLOWING RELATIONSHIP TO THAT INDIVIDUAL may, ~~give~~
4 IN THE FOLLOWING ORDER OF PRIORITY AND SUBJECT TO SUBSECTION (3),
5 MAKE A GIFT OF all or ~~any~~ A physical part of ~~the decedent's~~
6 THE DECEASED INDIVIDUAL'S body for ~~any~~ A purpose specified in
7 section 10103:

8 (a) The spouse.

9 (B) A PATIENT ADVOCATE DESIGNATED BEFORE APRIL 1, 2000 UNDER
10 SECTION 496 OF THE REVISED PROBATE CODE, 1978 PA 642, MCL
11 700.496, OR DESIGNATED ON OR AFTER APRIL 1, 2000 UNDER SECTION
12 5506 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386,
13 MCL 700.5506.

14 (C) ~~(b)~~ An adult son or daughter.

15 (D) ~~(c)~~ Either parent.

16 (E) ~~(d)~~ An adult brother or sister.

17 (F) ~~(e)~~ A guardian of the person of the decedent at the
18 time of the death.

19 (G) ~~(f) Any other person~~ AN INDIVIDUAL OTHER THAN AN INDI-
20 VIDUAL DESCRIBED IN SUBDIVISIONS (A) TO (F), WHO IS authorized or
21 under obligation to dispose of the body.

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

25 (A) NO OTHER INDIVIDUAL HAVING GREATER PRIORITY UNDER SUB-
26 SECTION (2) TO MAKE THE GIFT IS AVAILABLE OR CAPABLE OF MAKING
27 THE DECISION AT THE TIME OF THE DECEDENT'S DEATH.

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

4 (C) THE INDIVIDUAL 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) A GIFT MADE BY AN INDIVIDUAL DESCRIBED IN SUBSECTION (2)
8 IS NOT REVOCABLE BY AN INDIVIDUAL HAVING LESSER PRIORITY UNDER
9 SUBSECTION (2).

10 (5) ~~-(3)-~~ If the donee has actual notice ~~of contrary indi-~~
11 ~~cations by~~ THAT the decedent HAD EXPRESSED AN UNWILLINGNESS TO
12 MAKE THE GIFT, or ACTUAL NOTICE that ~~a gift by a member of a~~
13 ~~class is opposed by a member of the same or a prior class, the~~
14 ~~donee~~ AN INDIVIDUAL HAVING PRIORITY UNDER SUBSECTION (2) EQUAL
15 TO OR GREATER THAN THAT OF THE INDIVIDUAL MAKING THE GIFT UNDER
16 SUBSECTION (2) OPPOSES THE MAKING OF THE GIFT, THE DONEE shall
17 not accept the gift. ~~The persons authorized by subsection (2)~~
18 ~~may make the gift after or immediately before death.~~

19 (6) ~~-(4)-~~ A gift of all or a physical part of a body UNDER
20 THIS SECTION authorizes any examination necessary to assure medi-
21 cal acceptability of the gift for the purposes intended.

22 (7) ~~-(5)-~~ The rights of the donee created by the gift are
23 paramount to the rights of others except as provided by section
24 10108(4).

25 Sec. 10104. (1) A gift of all or a physical part of the
26 DONOR'S body under section 10102(1) may be made by will. The
27 gift becomes effective upon the death of the testator without

1 waiting for probate. If the will is not probated, or if ~~it~~ THE
2 WILL is declared invalid for testamentary purposes, the gift, to
3 the extent that ~~it~~ THE GIFT has been acted upon in good faith,
4 is nevertheless valid and effective.

5 (2) A gift of all or a physical part of the DONOR'S body
6 under section 10102(1) may also be made by document OF GIFT other
7 than a will. ~~The~~ A gift MADE BY A DOCUMENT OF GIFT DESCRIBED
8 IN THIS SUBSECTION becomes effective upon the death of the
9 donor. ~~The document, which may be a card designed to be carried~~
10 ~~on the person, shall be signed by the donor in the presence of 2~~
11 ~~witnesses who shall sign the document in the donor's presence.~~
12 ~~If the donor cannot sign, the document may be signed for the~~
13 ~~donor at his or her direction and in his or her presence in the~~
14 ~~presence of 2 witnesses who shall sign the document in the~~
15 ~~donor's presence. Delivery of the document of gift during the~~
16 ~~donor's lifetime is not necessary to make the gift valid.~~
17 SUBJECT TO SUBSECTIONS (3) AND (4), A DOCUMENT OF GIFT OTHER THAN
18 A WILL MAY BE 1 OR MORE OF THE FOLLOWING:

19 (A) A PERSONAL IDENTIFICATION CARD ISSUED TO THE DONOR BY
20 THE SECRETARY OF STATE PURSUANT TO 1972 PA 222, MCL 28.291 TO
21 28.300, THAT CONTAINS A STATEMENT THAT THE HOLDER OF THE PERSONAL
22 IDENTIFICATION CARD IS AN ORGAN AND TISSUE DONOR UNDER THIS PART,
23 ALONG WITH THE SIGNATURE OF THE HOLDER AND THE SIGNATURE OF AT
24 LEAST 1 WITNESS TO THE HOLDER'S SIGNATURE, AS DESCRIBED IN SEC-
25 TION 2(1)(C)(v) OF 1972 PA 222, MCL 28.292.

26 (B) A MOTOR VEHICLE OPERATOR'S OR CHAUFFEUR'S LICENSE ISSUED
27 TO THE DONOR BY THE SECRETARY OF STATE PURSUANT TO THE MICHIGAN

1 VEHICLE CODE, 1949 PA 300, MCL 257.1 TO 257.923, THAT CONTAINS A
 2 STATEMENT THAT THE LICENSEE IS AN ORGAN AND TISSUE DONOR UNDER
 3 THIS PART, ALONG WITH THE SIGNATURE OF THE LICENSEE AND THE SIG-
 4 NATURE OF AT LEAST 1 WITNESS TO THE LICENSEE'S SIGNATURE, AS
 5 DESCRIBED IN SECTION 310(2)(C)(v) AND (D) OF THE MICHIGAN VEHICLE
 6 CODE, 1949 PA 300, MCL 257.310.

7 (C) A document ~~which~~ OF GIFT THAT conforms substantially
 8 to the following form: ~~is sufficient for the purposes of this~~
 9 ~~subsection:~~

10 Uniform Donor Card

11 of.....
 12 Print or type name of donor
 13 In the hope that I may help others, I hereby make this anatomical
 14 gift if medically acceptable, to take effect upon my death. The
 15 words and marks below indicate my desires.
 16 I give: (a) any needed organs or physical parts
 17 (b) only the following organs or physical parts
 18
 19 Specify the organ(s) or physical part(s)
 20 For the purposes of transplantation, therapy, medical research or
 21 education;
 22 (c) my body for anatomical study if needed.
 23 Limitations or special wishes, if any: _____
 24 Signed by the donor and ~~the following 2 witnesses~~ AT LEAST 1
 25 WITNESS, in the presence of each other:

26	_____	_____
27	Signature of donor	Date of birth of donor
28	_____	_____
29	Date signed	City and state
30	_____	_____
31	Witness	Witness

32 (3) IF A DONOR DOES NOT SPECIFY A GIFT OF HIS OR HER ENTIRE
 33 BODY IN THE STATEMENT DESCRIBED IN SUBSECTION (2)(A) OR (B) ON
 34 THE INDIVIDUAL'S PERSONAL IDENTIFICATION CARD OR MOTOR VEHICLE
 35 OPERATOR'S OR CHAUFFEUR'S LICENSE, THE GIFT IS LIMITED TO

1 PHYSICAL PARTS OF THE DONOR'S BODY AND DOES NOT INCLUDE THE
2 DONOR'S ENTIRE BODY.

3 (4) ~~-(3)-The~~ A gift UNDER SECTION 10102 may be made to a
4 specified OR UNSPECIFIED donee. ~~or without specifying a donee.~~
5 If the ~~latter~~ DONEE IS NOT SPECIFIED, ~~the gift may be accepted~~
6 ~~by~~ the attending physician MAY ACCEPT THE GIFT as donee upon or
7 following THE DONOR'S death. If the gift is made to a specified
8 donee who is not available at the time and place of death, the
9 attending physician MAY, upon or following THE DONOR'S death, AND
10 in the absence of any expressed indication that the donor desired
11 otherwise, ~~may~~ accept the gift as donee. ~~The~~ AN ATTENDING
12 physician who becomes a donee under this subsection shall not
13 participate in the procedures for removing or transplanting a
14 physical part.

15 (5) ~~-(4)-~~ Notwithstanding section 10108(4), the donor may
16 designate in his or her will ~~, card,~~ or other document of gift
17 DESCRIBED IN SUBSECTION (2) the ~~surgeon or~~ physician WHO IS to
18 carry out the ~~appropriate~~ procedures NECESSARY TO EFFECTUATE
19 THE GIFT. In the absence of a designation UNDER THIS SUBSECTION
20 or if the designee is not available, the donee or other person
21 authorized to accept the gift may employ or authorize ~~any sur-~~
22 ~~geon or~~ ANOTHER physician for the purpose OF EFFECTUATING THE
23 GIFT.

24 (6) A DONOR WHO IS UNABLE TO SIGN A DOCUMENT OF GIFT MAY
25 DIRECT ANOTHER INDIVIDUAL TO SIGN THE DOCUMENT OF GIFT ON HIS OR
26 HER BEHALF IF THE SIGNATURE OF THE OTHER INDIVIDUAL IS MADE IN
27 THE DONOR'S PRESENCE AND IN THE PRESENCE OF AT LEAST 1 WITNESS.

1 THE WITNESS SHALL ALSO SIGN THE DOCUMENT OF GIFT IN THE DONOR'S
2 PRESENCE.

3 (7) A GIFT OF ALL OR A PHYSICAL PART OF A DONOR'S BODY MADE
4 BY WILL AS AUTHORIZED BY SUBSECTION (1) OR BY A DOCUMENT OF GIFT
5 OTHER THAN A WILL AS AUTHORIZED BY SUBSECTION (2) IS NOT REVOCABLE
6 AFTER THE DEATH OF THE DONOR.

7 (8) ~~(5) Any~~ A gift by ~~a person~~ AN INDIVIDUAL designated
8 in section 10102(2) shall be made by a document signed by the
9 ~~person~~ INDIVIDUAL or made by the ~~person's~~ INDIVIDUAL'S tele-
10 graphic, ELECTRONIC, recorded telephonic, or other recorded
11 message.

12 (9) ~~(6)~~ A document of gift executed in another state or
13 foreign country and in accord with the laws of that state or
14 country is valid as a document of gift in this state, ~~although~~
15 EVEN IF the document does not conform substantially to the form
16 set forth in subsection ~~(2)~~ (2)(C).

17 Enacting section 1. This amendatory act does not take
18 effect unless Senate Bill No. _____ or House Bill No. _____
19 (request no. 00706'99 a) of the 90th Legislature is enacted into
20 law.