

# HOUSE BILL No. 4430

March 8, 2001, Introduced by Reps. Murphy, Rich Brown, Adamini, Whitmer, Zelenko, Bernero, Waters, Spade, Williams, Kolb, McConico, Phillips, Lockwood, Clarke, DeWeese, Neumann and Dennis 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

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GWH

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) [A PATIENT ADVOCATE DESIGNATED UNDER SECTION 5506 OF THE  
ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, M.C.L.  
700.5506, WHO IS AUTHORIZED TO MAKE SUCH A GIFT.

(B)] The spouse.

9 [

10

11 ]

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

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

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

15 (F) ~~(e)~~ A guardian of the person of the decedent at the  
16 time of the death.

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

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

23 (A) AN INDIVIDUAL HAVING A HIGHER PRIORITY UNDER SUBSECTION  
24 (2) TO MAKE THE GIFT IS NOT AVAILABLE OR IS NOT CAPABLE OF MAKING  
25 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 A LOWER 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 A HIGHER PRIORITY UNDER SUBSECTION  
15 (2) 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 UNDER 1972 PA 222, MCL 28.291 TO 28.300,  
21 THAT CONTAINS A STATEMENT THAT THE HOLDER OF THE PERSONAL IDENTI-  
22 FICATION CARD IS AN ORGAN AND TISSUE DONOR UNDER THIS PART, ALONG  
23 WITH THE SIGNATURE OF THE HOLDER AND THE SIGNATURE OF AT LEAST 1  
24 WITNESS TO THE HOLDER'S SIGNATURE, AS DESCRIBED IN SECTION 2 OF  
25 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 UNDER THE MICHIGAN VEHICLE

1 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 OF THE MICHIGAN VEHICLE CODE, 1949  
 6 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 REVOC-  
6 BLE 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. 4431  
19 (request no. 01144'01 a) of the 91st Legislature is enacted into  
20 law.