House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

ORGAN DONATIONS

House Bill 4125 (Substitute H-1)
House Bill 4126 as introduced
First Analysis (3-19-03)

Sponsor: Rep. Michael C. Murphy
Committee: Health Policy

THE APPARENT PROBLEM:

Promoters of organ donation throughout the nation and the state have engaged in an ongoing effort to educate the public about the benefits of making anatomical gifts effective upon one's death and the importance of making the decision to be a donor while one is still alive. Whatever one's religious and philosophical beliefs about the immortality of a noncorporeal soul, providing that one's body will be available to individuals who will die without organ or tissue transplants or to medical researchers who study cadavers to enrich their understanding of human life is an almost certain way of ensuring that someone else's life will continue after one's death. For instance, in testimony before the House Health Policy Committee, one "donor parent", who lost her daughter and only child four years ago, explained that her daughter had given her heart to a mother, one kidney to another mother, the other kidney to a school teacher, her liver to a sanitation engineer, and her corneas to two women in Venice, Italy. Just last year she and her husband met the woman who received their daughter's heart and were pleased to see that she was alive and well.

In 1998 the legislature enacted several laws (Public Acts 118, 120, and 458 of 1998) designed to streamline the organ donation process. Before that legislation took effect, Michigan ranked 46th in the nation in terms of organ donors with only about 20,000 people on the donor registry. Since that time, the donor registry has grown to about 550,000, and Michigan is now ranked 17th in the nation. Despite Michigan's progress--2001 and 2002 were record years for organ donations in the state--about 150 people each year die waiting for transplants, and statistics for 2003 indicate that donations are down about ten percent from last year. As of March 1, 2003, 58 patients had received an organ transplant this year, 21 people had died waiting for a transplant, and nearly 2,400 patients were still waiting for a kidney, heart, lung, liver, or pancreas. Simply put, while Michigan has made great progress, the state's anatomical gift program still does not meet the demand for organs and tissues. Legislation has been introduced to make it easier for people to make their preferences about donating organs understood.

THE CONTENT OF THE BILLS:

The bills would amend the Public Health Code and the Estates and Protected Individuals Code to add patient advocates to the list of those authorized to make organ donations on behalf of deceased individuals. House Bill 4125 would also add driver's licenses and state identification cards to the list of allowable "documents of gift."

House Bill 4125 would amend the Public Health Code (MCL 333.10102 and 333.10104) to add patient advocates to the prioritized list of people allowed to donate by proxy the cadavers or parts of cadavers of people who during their lifetime had not indicated in their wills or by means of donor cards their intent to donate their bodies after death for medical or scientific purposes. The bill also would add driver's or chauffeur's licenses and state personal identification cards--in addition to wills and donor cards, which are currently included--to the list of acceptable "documents of gift" of an individual's body or body parts.

Proxy donations: prioritized list. The health code currently allows individuals "of sound mind and 18 years of age or more" to give all or any part of their bodies for a variety of purposes specified in the code--including medical or dental education, research, or therapy--with the gift to take effect upon death. The health code also lists other people who can donate (in descending order of priority and when people in prior classes are not available at the time of death) a dead person's body or parts (after or immediately before death), if that person had not indicated an objection to such a donation while he or she was still alive, and if none of the people in the same or earlier category on the list object. Currently, the list names the

following people in the following order who can act as proxy donors:

- (the dead person's) spouse,
- (his or her) adult son or daughter,
- either parent,
- an adult brother or sister,
- a guardian at the time of the person's death, or
- any other person authorized or under obligation to dispose of the body.

The bill would amend this section of the code to give priority over all other persons on the list to a patient advocate designated under the Estates and Protected Individuals Code.

The bill also would amend this section of the health code to specify that individuals authorized to make a gift of a dead person's body or parts could do so only if each of three conditions was met: (1) an individual with higher priority on the list was not available or was not capable of making the decision at the time of the decedent's death; (2) the individual making the gift had not received actual notice that the dead person had expressed an unwillingness to make the gift; and (3) the individual making the gift had not received actual notice that someone having equal or higher priority on the list opposed the making of the gift. Also, the bill would explicitly state that a gift made by someone on the list of authorized individuals would not be revocable by someone having a lower priority on the list. Finally, the bill would permit a gift by a proxy donor to be made by electronic message; currently such gifts must be made either by signing a document or by a telegraphic, a recorded telephonic, or another recorded message.

Direct donation: "document of gift." Currently, the code allows people during their lifetime to donate all or a part of their bodies when they die, either through their wills or by means of a "uniform donor card" that has been signed by the donor--or, if he or she can't sign, then at his or her direction--in the presence of two witnesses, who also must sign the card in the donor's presence. The health code specifies a form for a uniform donor card and does not require that a donor card be delivered during the donor's lifetime to make the gift valid.

The bill would amend this section of the health code to add to the allowable "documents of gift" both a personal identification card and a motor vehicle operator's (or chauffeur's) license issued to the donor by the secretary of state that contained a statement that the card or license holder was an organ and tissue donor, along with the holder's signature and that of at least one witness. If a donor did not specify a gift of his or her entire body on his or her state personal identification card or state driver's or chauffeur's license, then the "gift" would be limited to parts of the donor's body and would not include the donor's entire body. A donor could still donate all or part of his or her body by means of a uniform donor card but would need the signature of just one witness instead of two.

A donor who was unable to sign a "document of gift" could direct someone else to sign on his or her behalf if the signature of the other individual and at least one witness were made in the donor's presence. Finally, the bill would expressly state that a donation by will or by another document of gift was irrevocable after the donor died.

House Bill 4126 would amend the Estates and Protected Individuals Code (MCL 700.1106 et al.) to do all of the following:

- amend the act's definition of "patient advocate" to include an individual authorized to make an anatomical gift on behalf of another individual" (in addition to a patient advocate's current authority "to exercise powers concerning another individual's care, custody, and medical treatment");
- allow someone making a patient advocate designation to include in the designation (a) the authority for the designated patient advocate to make an anatomical gift of all or part of the designating individual's body and (b) a statement of the patient's desires on the making of an anatomical gift;
- require patient advocate designations authorizing the making of an anatomical gift to include a statement that this authority would be exercisable only when the patient was dead or when the patient's death was, "within reasonable medical judgment, imminent and inevitable" (and require acknowledgement of this condition when someone accepts a designation as a patient advocate); and
- clarify that the part of a patient advocate designation that authorized the patient advocate to make an anatomical gift of all or part of the deceased

patient's body would not be revoked upon the patient's death.

Tie-bar. House Bills 4125 and 4126 are tie-barred so that neither bill could take effect unless both bills took effect.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Demand for organ transplants far exceeds the supply of donated organs, both nationally and in Michigan. At the national level, over 78,000 patients awaited organ transplants in 2001, while just under 24,000 organs were actually transplanted. As if that were not enough reason for concern, the number of wait-listed patients grew 8.1 percent from 2000 to 2001, while the number of transplanted organs grew only 4.7 percent during that period. The good news is that the rapid increase in the number of people waiting for organ transplants is partly a result of medical advances that have increased the number of organs that can be transplanted. During the 1970s kidneys were the most often transplanted organs, and then during the 1980s liver and heart transplantation became feasible, and in the 1990s it became possible to transplant lungs, intestines, and pancreases. In general, outcomes for transplant recipients improve over time, and hopefully, as doctors and researchers learn from their experience, transplantation procedures will continue to be perfected.

Legislation enacted in 1998 was designed to increase the visibility of the existing voluntary organ donation program and to improve its accessibility to potential organ donors, thereby increasing the numbers of donors and donated organs. Though the numbers of donors and donated organs have increased, it is important that people be given as many options as possible for ensuring that their wishes to donate organs are known and respected. House Bills 4125 and 4126 would continue this effort by adding driver's licenses and state ID cards to the list of acceptable "documents of gift" and by allowing a person's patient advocate to donate the person's organs by proxy after death or when death was imminent. The bills also would prevent surviving family members from overriding the deceased individual's stated intent, as conveyed by his or her patient advocate, to donate his or her body or organs after death. While the bills would not guarantee that the number of organ donations or successful organ transplantations will increase, they would help respect the wishes of those who want to pass on the gift of life when they die and have actively taken steps to ensure that they do so.

POSITIONS:

The Department of Community Health supports the bills. (3-18-03)

The Office of the Secretary of State supports the bills. (3-18-03)

The Gift of Life Transplant Society of Michigan supports the bills. (3-18-03)

The Michigan Health and Hospital Association supports the bills. (3-18-03)

Analyst: J. Caver

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.