



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4125 (Substitute H-1 as reported without amendment)  
House Bill 4126 (Substitute S-1 as reported)  
House Bill 4479 (Substitute H-2 as reported without amendment)  
Sponsor: Representative Michael C. Murphy (House Bills 4125 & 4126)  
Representative John Gleason (House Bill 4479)  
House Committee: Health Policy  
Senate Committee: Health Policy

Date Completed: 6-30-03

**RATIONALE**

Michigan law contains a number of provisions that enable people to make anatomical gifts upon death. Under Part 101 of the Public Health Code, an individual, in a will or another document, may make a gift of all or part of his or her own body for research or transplantation. The Code also identifies and prioritizes people who may donate all or part of a deceased person's body for the same purpose. Under the Estates and Protected Individuals Code, when a hospital patient is near death or has died, a hospital representative must request consent for an anatomical gift from someone who is authorized to give consent. The Michigan Vehicle Code requires the Secretary of State to provide applicants for driver's licenses with information about making anatomical gifts, and give them the opportunity to be placed on Michigan's organ donor registry. Public Act 222 of 1972 contains the same requirement regarding applicants for a State personal identification card. In addition, driver's licenses and State personal ID cards must contain a statement that a licensee or cardholder is an organ and tissue donor.

Despite these provisions, the number of people needing an organ transplant continues to exceed the number of donations. According to Gift of Life of Michigan, 2,403 Michigan residents were waiting for a transplant as of June 1, 2003; during the first six months of the year, 197 patients had received a transplant, and 51 had died waiting for one. Apparently, one reason for the imbalance between the need for transplants and the availability of organs is that, in some cases, the wishes of a willing donor are overridden by family members. Traditionally, hospitals and

transplant agencies have let families decide whether to make an anatomical gift, even if the deceased was listed on the organ donor registry or signed a uniform donor card. It has been suggested that the law should protect a person's decision to donate organs after death.

**CONTENT**

**The bills would amend the Public Health Code and the Estates and Protected Individuals Code to do the following:**

- **Specify that an anatomical gift made by a will or a document of gift would not be revocable after the death of the donor.**
- **Permit a person to authorize a designated patient advocate to make an anatomical gift on the person's behalf.**
- **Give a designated patient advocate priority over others authorized to make an anatomical gift upon the patient's death.**
- **Provide that a gift could not be revoked by someone who had lower priority to make a gift than the person making the gift.**
- **Specify that if an individual had made an anatomical gift of his or her body, a hospital representative would not have to request consent to the gift.**
- **Add State identification cards and driver's licenses to the list of acceptable documents authorizing an anatomical gift.**

The bills are tie-barred to each other.

### **House Bill 4125 (H-1)**

Part 101 of the Public Health Code permits an individual of sound mind who is at least 18 years old to make a gift or all or part of his or her body for research or transplantation. Also, immediately upon death and in the absence of contrary indications by the deceased, a family member, guardian, or other person may donate all or part of the deceased's body for the same purpose. The Code lists the people who may make this decision in the following order of priority: the spouse, an adult son or daughter, either parent, an adult brother or sister, a guardian, or any other person authorized or under obligation to dispose of the body. The bill would add to the list a patient advocate designated under Section 5506 of the Estates and Protected Individuals Code, and give a patient advocate first priority. (House Bill 4126 (S-1) would amend Section 5506 to permit a patient advocate to donate all or part of a deceased's body, if the advocate had been authorized to do so by the deceased.)

The bill specifies that a gift made by a person on the list would not be revocable by a person having a lower priority.

Currently, a person on the list may make an anatomical gift only if someone having higher priority is not available at the time of death. The bill also would allow someone to make a gift if a person having higher priority were not capable of making the decision at the time of the decedent's death.

Under the Code, the gift of all or part of a donor's body may be made by a will or by a document other than a will, effective upon the death of the donor. The bill would refer to a "document of gift". Currently, a document may be a card signed by the donor in the presence of two witnesses. If the donor cannot sign, the document may be a card designed to be carried on the person, signed by the donor or for the donor at his or her direction, and in the presence of two witnesses. Delivery of the document during the donor's lifetime is not necessary to make the gift valid. The bill would delete these provisions.

Under the bill, a document of gift could be a State personal identification card or a motor vehicle operator's or chauffeur's license issued

to the donor by the Secretary of State. The card or license would have to state that the card-holder or the licensee was an organ and tissue donor. The statement would have to be signed by the card-holder or licensee and at least one witness. A donor unable to sign a document of gift could direct another person to sign the document on his or her behalf if the signature of the other individual were made in the donor's presence and in the presence of at least one witness, who also would have to sign the document of gift in the donor's presence.

The Code also provides for a Uniform Donor Card that may be used to make an anatomical gift. The bill would retain this document but require the signature of at least one witness. Currently, a Uniform Donor Card must be signed by two witnesses.

The bill specifies that a gift of all or part of a donor's body made by a will or by a document of gift would not be revocable after the death of the donor. The bill also provides that, if a donor did not specify a gift of his or her entire body in the statement on the card or license, an anatomical gift would be limited to physical parts of the donor's body.

### **House Bill 4126 (S-1)**

The Estates and Protected Individuals Code (EPIC) permits an individual to designate in writing a patient advocate to exercise powers concerning care, custody, and medical treatment decisions for that person. The bill would permit an individual making a patient advocate designation to include in the designation the authority for the advocate to make an anatomical gift of all or part of the individual's body in accordance with EPIC and Section 10102 of the Public Health Code (which lists the people who may make an anatomical gift of a decedent's body). A patient advocate designation also could include a statement of the patient's desires on the making of an anatomical gift of all or part of the patient's body under Part 101 of the Public Health Code.

Currently, a patient advocate designation must state that the advocate's authority is exercisable only when the patient is unable to participate in medical treatment decisions. Under the bill, in the case of the authority to make an anatomical gift, the designation

would have to state that the authority remained exercisable after the patient's death. The acceptance of the designation that a patient advocate must sign also would have to state that the authority remained exercisable after the patient's death.

Under EPIC, a patient advocate may exercise his or her authority only when the patient is unable to participate in medical treatment decisions, as determined by the patient's attending physician and another physician or a licensed psychologist. Under the bill, if a patient advocate were authorized to make an anatomical gift of all or part of the patient's body, the patient advocate would have to act on the patient's behalf in accordance with Section 10102 of the Public Health Code, and could do so only after the patient had been declared unable to participate in medical treatment decisions, as currently provided, or declared dead by a licensed physician.

Currently, a patient advocate designation is revoked by the patient's death. Under the bill, the part of a designation, if any, authorizing the 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.

### **House Bill 4479 (H-1)**

Under the Public Health Code, when a patient is at or near death and his or her body is suitable for donation, a designated hospital representative must make a request for consent to the gift of all or any physical part of the decedent's body, except under certain circumstances. The request must be made to someone authorized by the Code to make an anatomical gift on behalf of another. Under the bill, if the deceased had made a gift of his or her body or body parts, the gift would not be revocable and a designated hospital representative would not have to make a request for consent, unless the decedent had revoked the gift through oral statement, indication in the will, or other means.

The Code requires a hospital representative to complete the hospital's organization log sheet after making a request for an anatomical gift. The bill also would require a hospital representative to complete the log sheet after the death of a patient or decedent who made an anatomical gift.

MCL 333.10101 & 333.10104 (H.B. 4125)  
700.1106 et al. (H.B. 4126)  
333.10102a (H.B. 4479)

## **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**

Michigan has taken many steps to inform people about making anatomical gifts, and to create convenient opportunities for people to sign up to be organ donors. Nevertheless, family members may override a donor's wishes. Although the organs technically could still be retrieved, transplant workers generally yield to the survivors. As a result, organs that otherwise would be available are not used to save a patient's life.

This legislation would ensure that the wishes of organ donors would be honored, and healthy organs not wasted. In particular, the bills would make it clear that an anatomical gift could not be revoked after the donor's death. If a hospital patient had made an anatomical gift, there would be no need for a hospital representative to request consent from a family member, who could not veto the patient's choice. Rather than imposing more trauma on a grieving spouse or relatives, this would spare them from struggling with the decision. Transplant coordinators then could inform the family that the deceased wanted to be a donor, explain how the process would work, and tell them that the hospital was carrying out the patient's wishes.

### **Supporting Argument**

Under House Bill 4126 (S-1), individuals designating a patient advocate could authorize him or her to make an anatomical gift, and could state their desires on the matter. Then, under House Bill 4125 (H-1), the advocate would have decision-making priority over the other people who may make an anatomical gift on behalf of a deceased. These people are likely to base their decision, at least in part, on their own feelings and preferences, while the patient advocate would be representing the wishes of the deceased. The bill also would ensure that a family member could not override the patient advocate's decision, and no one with lower priority could revoke the decision of someone having higher priority.

**Supporting Argument**

House Bill 4125 (H-1) would make it clear that a driver's license or State personal ID card was legal authorization for an anatomical gift. The Michigan Vehicle Code and Public Act 222 of 1972 already require a license or card to indicate that the licensee or card-holder is an organ and tissue donor. The bill would recognize these documents, in addition to the uniform donor card, in the Public Health Code. In addition, requiring at least one witness, rather than two witnesses, would be consistent with the Vehicle Code and Public Act 222, and could make it easier for a person to become a donor.

Legislative Analyst: Suzanne Lowe

**FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Dana Patterson

H0304\s4125a

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.