

HOUSE BILL No. 4125

January 30, 2003, Introduced by Reps. Murphy, Condino, McConico, Paletko, Dennis, Kolb, Williams, Plakas, Minore, Clack, Jamnick and Hunter 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 under section 5506 of the
10 estates and protected individuals code, 1998 PA 386,
11 MCL 700.5506, who is authorized to make such a gift.

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
18 individual described in subdivisions (a) to (f), who is
19 authorized or under obligation to dispose of the body.

20 (3) An individual described in subsection (2) may make a gift
21 of all or a physical part of a decedent's body in accordance with
22 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.

26 (b) The individual making the gift has not received actual
27 notice that the decedent had expressed an unwillingness to make

1 the gift.

2 (c) The individual making the gift has not received actual
3 notice that an individual having equal or greater priority under
4 subsection (2) opposes the making of the gift.

5 (4) A gift made by an individual described in subsection (2)
6 is not revocable by an individual having a lower priority under
7 subsection (2).

8 (5) ~~-(3)-~~ If the donee has actual notice ~~of contrary~~
9 ~~indications by~~ that the decedent had expressed an unwillingness
10 to make the gift, or actual notice that ~~a gift by a member of a~~
11 ~~class is opposed by a member of the same or a prior class, the~~
12 ~~donee~~ an individual having a higher priority under subsection
13 (2) than that of the individual making the gift under
14 subsection (2) opposes the making of the gift, the donee shall
15 not accept the gift. ~~The persons authorized by subsection (2)~~
16 ~~may make the gift after or immediately before death.~~

17 (6) ~~-(4)-~~ A gift of all or a physical part of a body under
18 this section authorizes any examination necessary to assure
19 medical acceptability of the gift for the purposes intended.

20 (7) ~~-(5)-~~ The rights of the donee created by the gift are
21 paramount to the rights of others except as provided by section
22 10108(4).

23 Sec. 10104. (1) A gift of all or a physical part of the
24 donor's body under section 10102(1) may be made by will. The
25 gift becomes effective upon the death of the testator without
26 waiting for probate. If the will is not probated, or if ~~it~~ the
27 will is declared invalid for testamentary purposes, the gift, to

1 the extent that ~~it~~ **the gift** has been acted upon in good faith,
2 is nevertheless valid and effective.

3 (2) A gift of all or a physical part of the **donor's** body
4 under section 10102(1) may also be made by document **of gift** other
5 than a will. ~~The~~ **A gift made by a document of gift described**
6 **in this subsection** becomes effective upon the death of the
7 donor. ~~The document, which may be a card designed to be carried~~
8 ~~on the person, shall be signed by the donor in the presence of 2~~
9 ~~witnesses who shall sign the document in the donor's presence.~~
10 ~~If the donor cannot sign, the document may be signed for the~~
11 ~~donor at his or her direction and in his or her presence in the~~
12 ~~presence of 2 witnesses who shall sign the document in the~~
13 ~~donor's presence. Delivery of the document of gift during the~~
14 ~~donor's lifetime is not necessary to make the gift valid.~~
15 **Subject to subsections (3) and (4), a document of gift other than**
16 **a will may be 1 or more of the following:**

17 (a) A personal identification card issued to the donor by the
18 secretary of state under 1972 PA 222, MCL 28.291 to 28.300, that
19 contains a statement that the holder of the personal
20 identification card is an organ and tissue donor under this part,
21 along with the signature of the holder and the signature of at
22 least 1 witness to the holder's signature, as described in
23 section 2 of 1972 PA 222, MCL 28.292.

24 (b) A motor vehicle operator's or chauffeur's license issued
25 to the donor by the secretary of state under the Michigan vehicle
26 code, 1949 PA 300, MCL 257.1 to 257.923, that contains a
27 statement that the licensee is an organ and tissue donor under

1 this part, along with the signature of the licensee and the
 2 signature of at least 1 witness to the licensee's signature, as
 3 described in section 310 of the Michigan vehicle code, 1949
 4 PA 300, MCL 257.310.

5 (c) A document ~~which~~ of gift that conforms substantially to
 6 the following form: ~~is sufficient for the purposes of this~~
 7 ~~subsection:~~

8 Uniform Donor Card

9 of.....

10 Print or type name of donor

11 In the hope that I may help others, I hereby make this anatomical
 12 gift if medically acceptable, to take effect upon my death. The
 13 words and marks below indicate my desires.

14 I give: (a) any needed organs or physical parts

15 (b) only the following organs or physical parts

16
 17 Specify the organ(s) or physical part(s)
 18 For the purposes of transplantation, therapy, medical research or
 19 education;

20 (c) my body for anatomical study if needed.

21 Limitations or special wishes, if any: _____

22 Signed by the donor and ~~the following 2 witnesses~~ at least 1
 23 witness, in the presence of each other:

24
 25 _____ Date of birth of donor

26
 27 _____ City and state

28
 29 _____ Witness

30 (3) If a donor does not specify a gift of his or her entire
 31 body in the statement described in subsection (2)(a) or (b) on
 32 the individual's personal identification card or motor vehicle
 33 operator's or chauffeur's license, the gift is limited to
 34 physical parts of the donor's body and does not include the
 35 donor's entire body.

36 (4) ~~(3) The~~ A gift under section 10102 may be made to a

1 specified **or unspecified** donee. ~~or without specifying a donee.~~
 2 If the ~~latter~~ **donee is not specified**, ~~the gift may be accepted~~
 3 ~~by~~ the attending physician **may accept the gift** as donee upon or
 4 following **the donor's** death. If the gift is made to a specified
 5 donee who is not available at the time and place of death, the
 6 attending physician **may**, upon or following **the donor's** death, **and**
 7 in the absence of any expressed indication that the donor desired
 8 otherwise, ~~may~~ accept the gift as donee. ~~The~~ **An attending**
 9 physician who becomes a donee under this subsection shall not
 10 participate in the procedures for removing or transplanting a
 11 physical part.

12 **(5)** ~~(4)~~ Notwithstanding section 10108(4), the donor may
 13 designate in his or her will ~~—card—~~ or other document of gift
 14 **described in subsection (2)** the ~~surgeon or~~ physician **who is** to
 15 carry out the ~~appropriate~~ procedures **necessary to effectuate**
 16 **the gift**. In the absence of a designation **under this subsection**
 17 or if the designee is not available, the donee or other person
 18 authorized to accept the gift may employ or authorize ~~any~~
 19 ~~surgeon or~~ **another** physician for the purpose **of effectuating the**
 20 **gift**.

21 **(6)** A donor who is unable to sign a document of gift may
 22 direct another individual to sign the document of gift on his or
 23 her behalf if the signature of the other individual is made in
 24 the donor's presence and in the presence of at least 1 witness.
 25 The witness shall also sign the document of gift in the donor's
 26 presence.

27 **(7)** A gift of all or a physical part of a donor's body made

1 by will as authorized by subsection (1) or by a document of gift
2 other than a will as authorized by subsection (2) is not
3 revocable after the death of the donor.

4 **(8)** ~~—(5) Any~~ A gift by ~~a person~~ **an individual** designated
5 in section 10102(2) shall be made by a document signed by the
6 ~~person~~ **individual** or made by the ~~person's~~ **individual's**
7 telegraphic, **electronic**, recorded telephonic, or other recorded
8 message.

9 **(9)** ~~—(6)~~ A document of gift executed in another state or
10 foreign country and in accord with the laws of that state or
11 country is valid as a document of gift in this state, ~~although~~
12 **even if** the document does not conform substantially to the form
13 set forth in subsection ~~—(2)—~~ **(2)(c)**.

14 Enacting section 1. This amendatory act does not take
15 effect unless Senate Bill No. _____ or House Bill No. 4126
16 (request no. 00627'03 a) of the 92nd Legislature is enacted into
17 law.