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BILL



ANALYSIS

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Senate Bill 301 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Jud Gilbert, II
Committee: Transportation

Date Completed: 3-17-05

RATIONALE

Under Michigan law, there are several ways in which an individual may document his or her wishes regarding organ and tissue donation upon his or her death. An individual may do so in a will, advance directive, durable power of attorney, or living will. Individuals also may sign the Michigan Organ and Tissue Donor Registry, which is maintained by Gift of Life Michigan, the organization designated by the Federal government as the State's organ procurement agency. Individuals may register with Gift of Life on the organization's website, or by fax or mail. In addition, a driver license or official State personal identification card containing a statement that the licensee or cardholder is an organ and tissue donor, along with the signature of the person and at least one witness, constitutes a document of gift.

Legislation was enacted in 1998 to require the Secretary of State (SOS), in conjunction with the issuance of an official State identification card or driver license, to provide written information about the Registry and an individual's right to make an anatomical gift under the Public Health Code, and give individuals an opportunity to register as organ donors. To meet this requirement, the SOS includes an Organ and Tissue Donor Registry card with all license and ID card renewal mailings. The SOS must forward the information for a person indicating a desire to register to Gift of Life within 10 days.

Some people believe that a clearly identifiable symbol on the front of an individual's State ID card, rather than the current statement, would make it easier for

medical workers to recognize that the cardholder desires to be an organ donor. It also has been suggested that requiring the SOS to provide Gift of Life with electronic access to records of people who wish to participate in the Registry would lead to a more efficient and effective organ donation process.

CONTENT

The bill would amend Public Act 222 of 1972, which provides for an official State personal ID card, to do the following:

- Provide that the ID card of a person who wished to participate in the Organ, Tissue, and Eye Donor Registry would have to contain a heart insignia on the front, beginning January 1, 2007, instead of a statement that the person was an organ and tissue donor.**
- Require the Secretary of State, in conjunction with the application for a State ID card (instead of with the issuance of a card, beginning January 1, 2007), to give the applicant information explaining the right to make an anatomical gift and describing the Registry, and an opportunity to have his or her name placed on the Registry.**
- Require the SOS, beginning January 1, 2007, to ask each applicant for or holder of an official State ID card, in person or by mail, whether he or she agreed to participate in the Registry.**
- Require the SOS, beginning January 1, 2007, to maintain a record of an**

individual who indicated a willingness to have his or her name placed on the Registry.

- Require the SOS to establish and maintain the Registry in a manner that provided electronic access, including the transfer of data to Gift of Life Michigan.**
- Provide that enrollment in the Registry would constitute a legal agreement that remained binding after the donor's death regardless of the desires of next of kin who might oppose the donation.**
- Require the SOS to waive the original or renewal ID card fee for an individual wishing to add or remove a heart insignia.**

The bill is tie-barred to House Bills 4082 and 4470, which propose similar amendments to the Michigan Vehicle Code regarding an applicant for or holder of a driver license, and House Bill 4469, which would amend the Public Health Code to provide that a driver license or State ID with a heart insignia on the front would constitute a document of anatomical gift. Senate Bill 301 (S-1) is described below in further detail.

State ID Application Requirements

The Act requires an applicant for a State ID card to supply a birth certificate attesting to his or her age, or other sufficient documents or identification as the SOS may require. The bill would require an application to be made in a manner prescribed by the SOS and to contain the applicant's full name, date of birth, residence address, height, sex, eye color, signature, and, beginning January 1, 2007, intent to be an organ donor, as well as other information required or permitted on the official State personal ID card. The applicant could provide a mailing address if he or she received mail at an address other than his or her residence address.

Registry & Gift Information; Inquiry

Currently, in conjunction with the issuance of a State ID card, the SOS must provide written information explaining the applicant's right to make an anatomical gift in the event of death under Part 101 of the Public Health Code, as well as information describing the Organ Donation Registry program maintained by Gift of Life and giving the applicant the opportunity to be

placed on the Registry. The bill would delete the requirement that the information be written, and require the SOS to provide this information in conjunction with the application for, or, until January 1, 2007, the issuance of a State ID card. The bill also would refer to the Organ, Tissue, and Eye Donor Registry rather than the Organ Donation Registry. In addition, when issuing a State ID card, the SOS currently must give an applicant the opportunity to specify on his or her card that he or she is willing to make an anatomical gift in the event of death. The bill would require this in conjunction with the application, or, until January 1, 2007, the issuance of a card.

The bill would require the SOS, beginning January 1, 2007, to ask each person who applied for or held an official State ID card whether he or she agreed to participate in the Registry. The SOS would have to make this inquiry in person or by mail.

Registry Participation

The bill specifies that a person who agreed to participate in the Registry would not be considered to have revoked that agreement solely because his or her ID card expired.

The bill also states that enrollment in the Registry would constitute a legal agreement that remained binding and in effect after the donor's death, regardless of the expressed desires of the deceased donor's next of kin who might oppose the donation.

Organ & Tissue Donation Record

Currently, the SOS must inform an applicant for a State ID card that, if he or she indicates a willingness to have his or her name placed on the Registry, the SOS will forward his or her name and address to the Registry. Under the bill, the SOS would have to inform the applicant, instead, that the SOS would mark his or her record for the Registry.

Under the Act, if an applicant indicates a willingness to have his or her name placed on the Registry, the SOS must forward the applicant's name and address to the Registry within 10 days. Under the bill, the SOS also would have to forward the applicant's date of birth, and the 10-day forwarding requirement would apply until January 1, 2007. Beginning on that date,

the SOS would have to maintain a record of the individual. As currently provided, this information would be exempt from disclosure under the Freedom of Information Act. The bill also would require the SOS to establish and maintain the Registry in a manner that provided electronic access, including the transfer of data to Gift of Life, its successor organizations, and tissue and eye banks with limitations on the use and access to the Registry as determined by the SOS.

State ID Card Requirements

The Act requires a State ID card to contain a statement that the cardholder is an organ and tissue donor under Part 101 of the Public Health Code, the person's signature, and the signature of at least one witness. Under the bill, this requirement would apply until January 1, 2007. Beginning on that date, if a cardholder indicated his or her wish to participate in the Registry, the ID card would have to contain a heart insignia on the front.

The bill would require a State ID card to contain a sticker or decal as specified by the SOS to indicate that the cardholder had designated one or more patient advocates under the Estates and Protected Individuals Code, or a statement that he or she carried an emergency medical information card.

(The Act presently requires the SOS to designate on the ID card a space where the applicant may place a sticker or decal to indicate that he or she carries a separate emergency medical information card or has designated a patient advocate. The sticker or decal may be provided by any person, hospital, school, medical group, or association interested in helping to implement the emergency medical information card, which may contain information indicating that the person is an organ donor, information concerning the patient advocate designation, other emergency medical information, or an indication as to where the cardholder has stored or registered such information.)

The Act allows a person to indicate on a State ID card in a place designated by the SOS a statement that he or she has made an anatomical gift under Part 101 of the Public Health Code. Under the bill, this provision would apply until January 1, 2007.

Fee Waiver

Under the Act, an applicant must pay a \$10 fee for each original or renewal ID card issued. The SOS is required to waive the fee, however, if the applicant is at least 65 years old; has had his or her driver license suspended, revoked, or denied due to a mental or physical infirmity or disability; presents evidence of statutory blindness; or presents other good cause for a fee waiver. Under the bill, beginning January 1, 2007, the SOS also would have to waive the fee for a person who wished to add or remove a heart insignia.

MCL 28.291 & 28.292

BACKGROUND

According to Gift of Life Michigan's website, the organization is a full-service organ recovery organization, certified by Medicare and designated by the Centers for Medicare and Medicaid Services, that acts as the intermediary between donors, physicians, and hospital staff, and provides all services necessary for organ, tissue, and eye donation and transplantation. The Registry is a confidential database that is available to authorized procurement-group personnel and hospital staff 24 hours per day, seven days per week. Federal regulations require hospital staff to contact Gift of Life upon every death that occurs in a hospital to determine whether the deceased is a registered organ donor.

Under Part 101 of the Public Health Code, an individual who is at least 18 years old and of sound mind may make a gift of all or a physical part of his or her body, effective upon his or her death, to any of the following:

- Any hospital, surgeon, or physician for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.
- Any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy.
- Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation.
- Any specified individual for therapy or transplantation.

-- Any approved or accredited school of optometry, nursing, or veterinary medicine.

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

According to Gift of Life, as of March 1, 2005, there were 2,678 people waiting for life-saving organ transplants in Michigan. Since the beginning of the year, 43 people have died waiting for transplants. Due to the shortage of organs, it is critical that people document their wishes to donate in the event of death. The bill would help save lives by making organ donors more readily identifiable, and improving the efficiency of the registration process.

Currently, a person may sign the back of his or her State ID card, and have it signed by a witness, to indicate that he or she wishes to be an organ donor. Over time, however, the ink can wear off or become smudged, rendering the information illegible. Additionally, in the event of an emergency, medical staff might not check the back of a person's ID card as they focus on trying to save his or her life. By requiring a heart insignia to be placed on the front of the ID card, the bill would make it easier for medical personnel to identify an organ donor and would increase the likelihood that the person's wishes will be carried out.

The bill further would improve the efficiency of the system by requiring the SOS to maintain organ donor information in a manner that allowed Gift of Life to gain access to it electronically. It is not guaranteed that a person's ID card, will, or other document of gift will be available to hospital staff at the time of death, and family members might override an individual's stated intent if the document is not present. Thus, it is essential that a person who wishes to make an anatomical gift document that wish on the Registry. The Registry is accessible to hospitals around the clock, making it the most timely and convenient means for a person to document his or her wishes and ensure that they are followed. By requiring the SOS to provide an electronic data transfer mechanism, the

bill would help save money and reduce the occurrence of errors.

Finally, the bill's requirement that the SOS ask every applicant whether he or she would like to participate in Michigan's Organ and Tissue Donor Registry could increase public awareness. Apparently, even though the SOS mails registration cards with every State ID renewal notice, many people do not fill them out or even read them. According to a representative of Gift of Life Michigan, this requirement, together with the House bills, could increase registration from the current level of eight percent of the State's population to about 25% within four years.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Programming costs would be absorbed through the Department of State's Business Application Modernization Project. Minimal costs would result from inquiry requirements regarding whether applicants or current personal identification cardholders wished to participate in the Registry.

Fiscal Analyst: Bill Bowerman

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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.