



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 4938 (Substitute S-1 as reported)  
Sponsor: Representative Joe Hune  
House Committee: Health Policy  
Senate Committee: Health Policy

Date Completed: 9-28-05

### **RATIONALE**

The Public Health Code provides for an individual to choose to donate all or a physical part of his or her body upon death, or for a designated person to authorize such a donation. State law, however, also requires that medical examiners perform examinations and sometimes request autopsies of bodies under certain circumstances. Reportedly, there has been some confusion about when a body can be released for organ or tissue donation. In some cases, medical examiners have refused to release bodies when an autopsy or investigation into the cause or manner of death was required. For successful transplantation, the organ or tissue must be removed quickly to prevent deterioration, so an extended delay caused by a medical examination or autopsy could render the organ or tissue useless for transplantation. In order to expedite donations, it has been suggested that medical examiners should be required to communicate and enter into agreements with organ procurement organizations, as well as conduct examinations in time to permit transplants.

### **CONTENT**

**The bill would amend Public Act 181 of 1953, which regulates county medical examiners, to do the following:**

- Require a county medical examiner to contact the State's Federally designated organ procurement organization if he or she determined that a body might be suitable for donation or the donation of physical parts.**

- Require a county medical examiner to enter into an agreement regarding the donation of organs and tissues with the organ procurement organization and the eye and tissue organization that coordinated the recovery and allocation of anatomical donations in that county, if contacted by one or both of the organizations.**
- Require a county medical examiner to conduct the examination of the body of a donor within a time period that permitted organs, tissues, and eyes to remain viable for transplant.**

Under the bill, if a county medical examiner or his or her designee received notification from a person other than a representative of a hospital of a death that required an investigation by the county medical examiner's office under the Act, the medical examiner or designee would have to take charge of the body. (The circumstances requiring an investigation are described below, under **BACKGROUND.**)

If, upon viewing the body and inquiring personally into the cause and manner of the death, the medical examiner or designee determined that the body could be suitable for donation or for the donation of physical parts, according to criteria established by Michigan's Federally designated organ procurement organization, he or she would have to contact the organization or its successor organization in a timely manner as prescribed by the bill.

If contacted by the organ procurement organization or the eye and tissue

organization, or both, the county medical examiner would have to enter into an agreement with both organizations that coordinated the recovery and allocation of anatomical donations in that county. The agreement would have to outline the procedures and protocols of each party to assure that transplantable organs, tissues, and eyes were obtained from potential donors. The agreement would have to provide that if any extraordinary medical examinations were necessary before the removal of organs, tissues, or eyes, the organization would have to cover those costs.

The county medical examiner or designee could release any information to the organ procurement organization or the eye and tissue organization that was necessary to identify potential organ, tissue, or eye donors and seek consent for donations in accordance with Part 101 of the Public Health Code (described below).

The bill would prohibit the county medical examiner or a designee from discussing the option of organ donation with any individual with the authority to make a gift under the Public Health Code.

Whether a death occurred in a hospital or not, if an investigation of the cause and manner of death were required under the Act and the county medical examiner or designee had notice that the individual was a donor or that a gift of all or a physical part of the individual's body had been made in accordance with Part 101 of the Public Health Code, the medical examiner or designee would have to conduct the examination of the body within a time period that permitted organs, tissues, and eyes to remain viable for transplant. If the medical examiner or designee were unable to conduct the investigation within that time period, a health care professional who was authorized to remove an anatomical gift from a donor could remove the donated tissues and/or organs in order to preserve their viability for transplant upon notifying the medical examiner or designee. If the medical examiner or designee determined that an organ could be related to the cause of death, he or she could request to be present during the removal of, or request a biopsy of, the donated organs.

Proposed MCL 52.209

## **BACKGROUND**

Public Act 181 of 1953 requires a county medical examiner or deputy county medical examiner to investigate the cause and manner of death of an individual under each of the following circumstances:

- The individual dies by violence.
- The individual's death is unexpected.
- The individual dies without medical attendance by a physician, or while under home hospice care without medical attendance by a physician or a registered nurse, during the 48 hours immediately preceding the time of death, unless the attending physician is able to determine accurately the cause of death.

Additionally, if a prisoner in a county or city jail dies while imprisoned, the county medical examiner or deputy county medical examiner must examine the deceased prisoner's body.

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.

Also under Part 101, upon or immediately before the death of an individual who has not made an anatomical gift as described in the Code, any of the following individuals, in the following priority, may make a gift of all or a physical part of the decedent's body: a patient advocate designated under the Estates and Protected Individuals Code who is authorized to make such a gift; a spouse;

an adult son or daughter; either parent; an adult brother or sister; a guardian of the person of the decedent at the time of death; and any other individual who is authorized or under obligation to dispose of the body.

The chief executive officer of each hospital must develop and implement a policy regarding anatomical gift requests. At a minimum, the policy must provide for the designation of individuals who will make anatomical gift requests; for a clergy of the patient's religious preference, if known, to be made available upon request to the individuals to whom a request is made; the development of a support system that facilitates the making of requests; and the maintenance of an organ donation log sheet. At or near the death of a patient whose body, according to accepted medical standards, is suitable for donation or for the donation of physical parts, an individual designated to make requests under the policy must request one of the individuals listed above, in the order of stated priority, to consent to the gift.

The hospital's designated individual may not make a request if any of the following conditions exists:

- He or she has actual notice that the patient or decedent had expressed an unwillingness to make the gift.
- He or she has actual notice that an individual with a higher priority or equal priority opposes the making of a gift.
- He or she has knowledge that the gift is contrary to the decedent's religious beliefs.

## **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**

In Michigan last year, 150 individuals died while waiting for a transplant, according to Gift of Life Michigan, this State's Federally designated organ procurement agency. This bill would improve efficiency in the procurement of organ and tissue donations, connecting more donors with people in need of a transplant. A study by Gift of Life Michigan found 92 cases between 1999 and 2004 in which medical examiners had refused to release a body or specific organs

for the purpose of organ donation. Since in many of these cases more than one organ was suitable for donation, a total of 126 organs were refused, 57 of which were matched to potential recipients at the time of refusal. Of those 57 potential recipients, eight died while waiting for a transplant. The others experienced an extended waiting time of up to 192 days. Most individuals waiting for a donated organ or tissue only get one chance at most of being matched with a donor. To improve their survival rate, Public Act 181 of 1953 should provide a procedure for medical examiners to contact and enter agreements with organ donor organizations, thereby facilitating the organ donor process.

**Response:** There is a concern that if organ donation became a medical examiner's first obligation, the procedures proposed in the bill could interfere with criminal investigations.

### **Supporting Argument**

The bill would help ensure that a donor's wishes are met. Under current law, even if a person has authorized the donation of an organ or tissue, the medical examiner can deny the release of that organ or tissue if the death is the subject of a criminal investigation. According to a 2003 article in the *American Journal of Transplantation*, however, an exhaustive case law review in states in which similar legislation is in place found no instance in which the removal of an organ for donation had impeded the investigation of a crime or prevented the cause of death from being determined ("Vital Role of Medical Examiners and Coroners in Organ Transplantation"). The bill would clarify the procedures for medical examiners, allowing the donation of organs and tissues despite the need for an autopsy or other investigation. When an autopsy was needed in an area where few are performed, for example, the organ procurement organization could move the body at the organization's expense to allow the autopsy to be done quickly while still permitting organ donation. The medical examiner could request to be present to witness the removal of the organ, and/or to collect a biopsy, or tissue sample, for further analysis.

### **Supporting Argument**

The bill would protect medical examiners from potential liability by prohibiting them from discussing the option of organ donation

with any individual having the authority to make a gift under the Public Health Code. According to Gift of Life Michigan, only trained individuals are authorized to discuss organ donation with family members or others in a position to make a donation, under rules of the Centers for Medicare and Medicaid Services. If an untrained person mentions or provides information about organ donation and a donation is made based on that information, the person could be the target of litigation.

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

The bill would have no effect on State revenue or expenditures. The bill could alter local government expenditures by an unknown and likely minimal amount. The bill would have no effect on local government revenue.

This estimate is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David Zin

H0506\s4938a

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.