

Legislative Analysis



REVISED UNIFORM ANATOMICAL GIFT ACT

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4940 (Substitute H-2)
Sponsor: Rep. Paul Condino

House Bill 4943 as introduced
Sponsor: Rep. Andy Coulouris

House Bill 4941 as introduced
Sponsor: Rep. Kathy Angerer

House Bill 4944 as introduced
Sponsor: Rep. Edward Gaffney, Jr.

House Bill 4942 as introduced
Sponsor: Rep. Brenda Clack

House Bill 4945 as introduced
Sponsor: Rep. Brian Calley

Committee: Health Policy

First Analysis (12-4-07)

BRIEF SUMMARY: The bills in the package would adopt the Revised Uniform Anatomical Gift Law in place of the current act and amend various other acts that reference the UAGL to correct citations, delete obsolete provisions, and update language for clarity.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state and local units of government. A detailed discussion follows later in the analysis.

THE APPARENT PROBLEM:

Each year, organ transplants save the lives of tens of thousands across the nation, but many more die while still waiting. According to the Gift of Life, the Michigan organ and tissue donation program, 905 organs were transplanted last year from 292 Michigan residents who gave the gift of life. Yet, as of October 1, 2007, over 3,000 critically ill state residents were still waiting for a kidney, heart, liver, lung, pancreas, or intestinal transplant needed to survive. Many more lives could be impacted by donations of tissues (i.e., treatment of burn victims) and eyes (i.e., corneal transplants used to restore sight).

Over the past few years, several initiatives have been launched to bring awareness to the need for more organ and tissue donations and to make it easier for individuals to designate themselves as potential donors, such as the "heart sticker" placed on driver licenses and state ID cards. However, as discussions have continued on the state and national level, it has become clear that a serious impediment to gift of life donations is the patchwork nature of state and federal law. In 1968, the Uniform Anatomical Gift Law was proposed as a model act for states to adopt. Michigan adopted the uniform model act, but significantly overhauled it in 1978. Many other states also began amending their own state donation laws. A revised Uniform Anatomical Gift Act was promulgated in 1987 to address changes in practice and in circumstances, but only 26 states and jurisdictions adopted the revisions. In the ensuing years, individual states

continued to adopt amendments to their own laws and federal rules, and regulations were put into place relating to the role of hospitals and procurement organizations in securing organs, eyes, and tissue for transplantation.

The result is a hodge podge of confusing, conflicting state and federal laws that may, depending on where a donor dies, affect the implementation of the choice he or she made in life. For example, the laws vary from state to state as to whether or not a relative or care giver can override the person's choice to donate or not to donate. A decision made in one state may not be honored by another. In brief, it has become apparent that the lack of uniformity has grown to such extent that it is slowing down procurement efforts. Since transplantation occurs across state lines and requires speed and efficiency to keep an organ viable for transplantation, there simply is no time for hospitals and procurement organizations to research and try to conform to variations in the laws among the states and federal government.

To address the concerns that have surfaced, the National Conference of Commissioners on Uniform State Laws has researched and promulgated a new model act known as the Revised Uniform Anatomical Gift Law. The revised law has already been adopted by 20 states, and it is under consideration in 10 other states. Legislation to adopt the new model act in Michigan has been offered.

THE CONTENT OF THE BILLS:

House Bill 4950 would create the Revised Uniform Anatomical Gift Law. The rest of the bill package would amend various laws to conform references to the new donor law. House Bills 4941-4945 are tie-barred to House Bill 4940, and House Bill 4940 is tie-barred to each of the other bills in the package. A description of each bill in the package follows.

House Bill 4940

House Bill 4940 would replace many existing provisions of the Uniform Anatomical Gift Law, which Michigan originally adopted in 1968, with provisions of the Revised Uniform Anatomical Gift Law (UAGL) promulgated by NCCUSL in 2006. Significant changes, as identified in a summary prepared by NCCUSL, include the following:

- Change the name of the act to the Revised Uniform Anatomical Gift Law.
- Revise the definition section of the act to include many new terms.
- Honor the choice of an individual to be or not to be a donor and strengthen the language barring others from overriding a donor's decision to make, or not make, an anatomical gift.
- Create felony penalties for buying or selling a body part for compensation or for falsifying or forging a document of gift for financial gain.
- Prohibit, as a felony, purchasing or selling for compensation a body part for transplantation or therapy.

- Make it a felony to intentionally falsify, forge, conceal, deface, or obliterate a document of gift, an amendment or revocation of gift, or a refusal.
- Allow emancipated minors and minors 16 years of age and over who have a driver's license to be a donor.
- Expand the list of persons who can make a gift of the individual's body or parts during the life of the donor to include, among others, a health care agent of the donor, and, under certain circumstances, a parent or guardian. Also, expand the list of persons who can make a gift of the deceased's body or parts to include adult grandchildren and an adult who exhibited special care and concern for the decedent.
- Resolve the tension between a health-care directive requesting the withholding or withdrawal of life support systems and anatomical gifts by permitting measures necessary to ensure the medical suitability of organs for intended transplantation or therapy to be administered (this would also apply to enrollment in a hospice program).
- Clarify and expand the rules relating to cooperation and coordination between procurement organizations and medical examiners.
- Allow anatomical gifts to be amended or revoked. Also, an individual could sign a refusal barring any other person from making an anatomical gift of his or her body or parts.
- With respect to organs donated for transplantation or therapy, harmonize the UAGL with federal law.
- Prioritize transplantation or therapy over research or education if a gift is made for all four purposes in a document of gift; for instance, if only a general intent to donate was specified, such as on a driver's license, the gift could be used for all four purposes in the order of transplantation, therapy, research, and education.
- Allow for electronic records and signatures.
- Recognize anatomical gifts made under other jurisdictions.
- Allow the person to whom a body part passes to conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purposes.
- Allow a physician or technician (defined to mean an individual determined to be qualified to remove or process body parts by an appropriate organization regulated under state or federal law, including an enucleator) to remove a donated part from the donor that the physician or technician is qualified to remove.
- Repeal Section 10102a pertaining to authorized persons obtaining consent for a donation from family or other authorized person.

The bill would take effect January 1, 2008.

House Bills 4941, 4942, 4944, and 4945

The bills are technical in nature, amending various acts to adopt changes to language and citations that would conform the acts to revisions made to the Uniform Anatomical Gift Law by House Bill 4940. The bills would also make editorial changes for clarity and delete obsolete provisions.

House Bill 4941 would amend Public Act 222 of 1972, which provides for an official personal identification card (state ID). House Bill 4942 would amend the Michigan Vehicle Code (MCL 257.307 and 257.310). House Bill 4944 would amend Public Act 1953 (MCL 52.209), which prescribes the duties of medical examiners. House Bill 4945 would amend the Estates and Protected Individuals Code (MCL 700.3206 et al.).

House Bill 4943

The bill would amend the Code of Criminal Procedure (MCL 777.13n) to specify that purchasing or selling a body part of a deceased individual for transplantation or therapy or falsifying, concealing, or defacing a document of an anatomical gift for financial gain would be a Class E felony against the public order with a five-year maximum term of imprisonment.

BACKGROUND INFORMATION:

The Senate has introduced a similar bill package of legislation. Senate Bills 710-715 have been reported from committee and are pending Senate floor action.

FISCAL INFORMATION:

House Bills 4940 and 4943 would have an indeterminate fiscal impact on the state and local units of government. To the extent that the bills increased the number of felony convictions or the severity of sentences, the bills could increase state or local correctional costs. The average appropriated cost of incarceration in a state prison is about \$31,000 per prisoner, a figure that includes allocated portions of various fixed costs. Actual costs vary by institution and security level. The state's average cost of parole and probation supervision is about \$2,000 per offender per year. Costs of any jail incarceration would be borne by the affected county(ies); those costs vary by county.

The felonies created under the bills would be Class E offenses against the public order. Exclusive of sentences for habitual offenders, sentencing guidelines ranges for the minimum sentence for a Class E offense vary from 0-3 months (for which a nonprison sanction would be required) to 24-38 months (for which a prison sentence would be required).

To the extent that collections of penal fine revenues increased under HB 4943, the bill could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

House Bills 4940-4942 would have no fiscal impact on the Department of State.

House Bills 4940 and 4944 would have no fiscal implications for the Department of Community Health.

ARGUMENTS:

For:

Adoption of the model act would bring the country one step closer to having uniform laws across the nation. Uniformity will increase the efficiency of the system, meaning that fewer organs will be lost due to delays or misinterpretations of confusing and conflicting laws. The model act also may increase the number of donations by expanding the pool of persons eligible to choose to make a donation (i.e., emancipated minors and minors eligible for a driver license); expanding the classes of people that can donate a loved one's organs and tissues (i.e., grandchildren); letting the majority of the members of a class present to make a donation under certain circumstances (i.e., two of three children could make a gift); creating an "opt-in" during life that cannot be overridden by relatives or legal representatives; recognizing anatomical gifts made under other jurisdictions (i.e., Michigan could recognize the donation of a person who died here made under another state's donor law); and clarify and expand the rules relating to cooperation and coordination between procurement organizations and medical examiners (i.e., this may increase the number of viable cadaver organs and tissues).

The model act would also address the conflict that can arise when a person has expressed a desire to be an organ donor but has also signed a health care directive that specifies no life support is to be used to sustain life. Certain organs, such as hearts, have a shorter "shelf life" so to speak, and must be used within a very short span time after removal from the donor. Sometimes life support equipment is used, especially in the case of a person who has been declared brain dead, to keep oxygen flowing to the heart or other organs to extend their viability while a transplant team is being assembled and the transplant patient readied for surgery. The model act would allow, within specified parameters, for measures necessary to protect the viability of the organ or organs to continue until the donor or his or her legal representative and the attending physician or hospice medical director can resolve the conflict.

The model act would allow a person to sign a refusal to donate that could not be overridden by his or her survivors after death; in fact, the family could not even be approached for consent to donation. The model act also includes important criminal penalties for selling body parts for transplantation or research and for fraudulent activities for financial gain.

(The model act only applies to gifts that would take place after the donor's death; it would not pertain to live donations, such as when a living person makes a donation of a kidney or piece of liver to another.)

With so many lives at stake, the time has come to update and unify the laws relating to organ donation and procurement.

POSITIONS:

The following organizations indicated support for or supplied written testimony supporting the bills:

The Department of Community Health
Gift of Life Michigan
Michigan Health and Hospital Association (MHA)
Michigan Eye-Bank
Musculoskeletal Transplant Foundation
Donate Life Coalition of Michigan
Michigan Donor Family Foundation
Minority Organ Tissue Transplant Education Program
National Kidney Foundation of Michigan
Michigan Hospice and Palliative Care Organization

The following have adopted statements of support for adoption of the model act by all states:

American Medical Association
American Society of Cataract and Refractive Surgery
American Academy of Ophthalmology
American Association of Tissue Banks
Association of Organ Procurement Organizations
The Cornea Society
Eye Bank Association of America
United Network for Organ Sharing (UNOS)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson
Mark Wolf
Susan Frey

■ 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.