

HOUSE BILL NO. 4646

May 23, 2023, Introduced by Reps. Haadsma, McKinney, DeBoer, Morgan, Hood, Paiz, Byrnes, Miller, Rogers, Liberati, Dievendorf, Tyrone Carter, MacDonell, Edwards, Hill and Hope and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 10121 and 10301 (MCL 333.10121 and 333.10301), section 10121 as added by 2008 PA 39 and section 10301 as added by 2012 PA 179.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 10121. (1) As used in this section:
- 2 (a) "Advance health care directive" means a power of attorney
- 3 for health care or a record signed or authorized by a prospective
- 4 donor containing the prospective donor's direction concerning a
- 5 health care decision for the prospective donor. Advance health care

1 directive includes a durable power of attorney **under the uniform**
2 **power of attorney act** and a designation of patient advocate under
3 part 5 of article V of the estates and protected individuals code,
4 1998 PA 386, MCL ~~700.5501~~**700.5506** to 700.5520.

5 (b) "Declaration" means a record signed by a prospective donor
6 specifying the circumstances under which a life support system may
7 be withheld or withdrawn from the prospective donor.

8 (c) "Health care decision" means any decision regarding the
9 health care of the prospective donor.

10 (2) If a prospective donor has a declaration or advance health
11 care directive or is enrolled in a hospice program, and the terms
12 of the declaration, directive, or enrollment and the express or
13 implied terms of a potential anatomical gift are in conflict with
14 regard to the administration of measures necessary to ensure the
15 medical suitability of a body part for transplantation or therapy,
16 the prospective donor's attending physician, the prospective donor,
17 and, if appropriate, the hospice medical director shall confer to
18 resolve the conflict. If the prospective donor is incapable of
19 resolving the conflict, an agent acting under the prospective
20 donor's declaration, directive, or hospice enrollment, or, if ~~none~~
21 **there is no agent** or the agent is not reasonably available, another
22 person authorized by law other than this part to make health care
23 decisions on behalf of the prospective donor, shall act for the
24 donor to resolve the conflict. The authorized parties shall attempt
25 to resolve the conflict as expeditiously as possible. Authorized
26 parties may obtain information relevant to the resolution of the
27 conflict from the appropriate procurement organization and any
28 other person authorized to make an anatomical gift for the
29 prospective donor under section 10109. Before resolution of the

1 conflict, measures necessary to ensure the medical suitability of
2 the body part are permissible if they are not contraindicated by
3 appropriate end-of-life care as determined by the stated wishes of
4 the prospective donor, by a written advance health care directive,
5 or, if appropriate, by the hospice medical director.

6 Sec. 10301. (1) The department may create, operate, and
7 maintain the peace of mind registry, which ~~shall~~**must** contain the
8 directives of voluntary registrants who are residents of this
9 state. The peace of mind registry ~~shall~~**must** be created, operated,
10 and maintained as provided in this act.

11 (2) The department may by contract delegate the creation,
12 operation, and maintenance of a peace of mind registry to a peace
13 of mind registry organization contingent ~~upon~~**on** the peace of mind
14 registry organization incurring all of the cost related to design,
15 maintain, and operate the registry.

16 (3) Both of the following conditions apply to a directive:

17 (a) A directive may be submittable through the United States
18 mail, or through uploaded portable document format (PDF) or another
19 secure electronic format as determined by the department.

20 (b) A directive ~~shall~~**must** contain a signature line for the
21 registrant.

22 (4) The peace of mind registry ~~shall~~**must** meet all of the
23 following requirements:

24 (a) Be accessible to registrants, health care providers, and
25 the department by way of a designated user identification and
26 password.

27 (b) Store all an individual's directive. However, the most
28 recently signed directive supersedes any earlier directive.

29 (c) Provide electronic access to stored directives on a

1 continuous basis at no cost to the health care providers and allow
2 health care providers to transmit directives into their respective
3 electronic medical records.

4 (d) Provide electronic storage and access to directives
5 submitted at no cost to the registrant.

6 (e) Include a unique identifier-searchable database,
7 including, but not limited to, the last 4 digits of an individual's
8 ~~social security~~ **Social Security** number and the individual's date of
9 birth and address.

10 (5) The department ~~, and~~ the secretary of state ~~, and the~~
11 ~~department of human services~~ shall each provide on its public
12 website information on directives and the peace of mind registry.
13 The department ~~, and~~ the secretary of state ~~, and the department of~~
14 ~~human services~~ shall promote public awareness of the advantages of
15 creating directives and the availability of the registry.

16 (6) The peace of mind registry ~~shall~~ **must** satisfy all of the
17 following conditions to the satisfaction of the department:

18 (a) Maintain a record of each individual who files a directive
19 to be stored in the peace of mind registry and make the record
20 available to the department.

21 (b) Create and provide forms for the registration of a
22 directive.

23 (c) Create and provide forms for the revocation of a
24 directive.

25 (7) The department and the peace of mind registry organization
26 shall ensure the privacy and security of all documents and
27 information submitted to, transmitted from, or stored in the peace
28 of mind registry. The department and any person who accesses the
29 peace of mind registry shall comply with all other provisions of

1 this act and any other law of this state or federal law
2 establishing privacy and security standards applicable to health or
3 other personal identifying information.

4 (8) Information in the peace of mind registry ~~shall~~**must** not
5 be accessed or used for any purpose unrelated to decision making
6 for health care or disposition of human remains, except that the
7 information may be used solely by the department or its designee
8 for statistical or analytical purposes if the individual's identity
9 is not revealed and all personal identifying information remains
10 confidential.

11 (9) The department or its designee shall provide both of the
12 following to an individual who files a directive with the peace of
13 mind registry to be stored in the registry:

14 (a) A wallet-sized card indicating that the holder has a
15 directive in the registry.

16 (b) An electronic mail message or postcard indicating
17 confirmation of the registration of a directive.

18 (10) By January 31 of each year, the department or peace of
19 mind organization, as applicable, shall report to the standing
20 committees of the house of representatives and senate on health
21 policy stating the total number of current and new registrants who
22 have submitted directives during the preceding calendar year.

23 (11) The department may promulgate rules under the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328, to provide for the implementation and administration of
26 this section.

27 (12) A peace of mind registry organization, with which the
28 department has contracted under subsection (2), and its employees
29 are immune from civil liability arising from the accuracy or

1 content of the registry, except ~~in the case of~~ **for** willful
2 negligence or gross negligence.

3 (13) A directive that was filed with and stored in the peace
4 of mind registry ~~shall-is~~ not ~~be~~ considered to be of greater legal
5 weight or validity solely by virtue of that filing and storage.

6 (14) As used in this section:

7 (a) "Department" means the department of ~~community health~~ **and**
8 **human services**.

9 (b) "Directive" means a document that is registered or filed
10 with the peace of mind registry as provided in this act and that is
11 either of the following:

12 (i) A durable power of attorney **under the uniform power of**
13 **attorney act** and **a** designation of patient advocate under part 5 of
14 article V of the estates and protected individuals code, 1998 PA
15 386, MCL ~~700.5501-700.5506~~ **700.5506** to 700.5520.

16 (ii) A signed or authorized record concerning an anatomical
17 gift containing a donor's direction concerning a health care
18 decision for the donor under the revised uniform anatomical gift
19 law, sections 10101 to 10123.

20 (c) "Health care provider" means any of the following:

21 (i) A health professional licensed, registered, or otherwise
22 authorized to engage in a health profession under part 170, 172, or
23 175, or a law of another state substantially similar to part 170,
24 172, or 175.

25 (ii) A health facility or agency licensed or certified under
26 article 17 or a law of another state substantially similar to
27 article 17.

28 (d) "Peace of mind registry" or "registry" means an internet
29 website containing access to directives as provided under this act.

1 (e) "Peace of mind registry organization" means an
2 organization certified or recertified by the secretary of the
3 United States ~~department of health and human services~~ **Department of**
4 **Health and Human Services** as a qualified organ procurement
5 organization under 42 USC 273(b), or its successor organization.

6 (f) "Sign" means that, with the present intent to authenticate
7 or adopt a record, an individual does either of the following:

8 (i) Executes or adopts a tangible symbol.

9 (ii) Attaches to or logically associates with the record an
10 electronic symbol, sound, or process.

11 Enacting section 1. This amendatory act does not take effect
12 unless Senate Bill No. ____ or House Bill No. 4644 (request no.
13 02179'23) of the 102nd Legislature is enacted into law.