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BILL ANALYSIS

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Senate Bills 710 through 715 (as introduced 9-4-07)

Sponsor: Senator John J. Gleason (S.B. 710)
Senator Alan Sanborn (S.B. 711)
Senator Hansen Clarke (S.B. 712)
Senator Jason E. Allen (S.B. 713)
Senator Roger Kahn, M.D. (S.B. 714)
Senator Gilda Z. Jacobs (S.B. 715)

Committee: Health Policy

Date Completed: 10-24-07

CONTENT

Senate Bill 710 would amend Part 101 (Uniform Anatomical Gift Law) and Part 102 (Disposition of Human Body Parts) of the Public Health Code to do the following:

- Change the title of Part 101 to the "Revised Uniform Anatomical Gift Law".
- Revise the criteria that an individual must meet to make an anatomical gift during his or her life.
- Revise the list of people who are authorized to make an anatomical gift on a donor's behalf upon or near death.
- Revise provisions pertaining to a document of gift and procedures for amending or revoking a document of gift.
- Revise procedures for determining the recipient of an anatomical gift.
- Prescribe procedures by which an individual could refuse to make an anatomical gift.
- Require a record search to determine whether a decedent had made an anatomical gift.
- Require each hospital to enter into agreements or affiliations with procurement organizations, and authorize administrative sanctions for failure to comply.
- Repeal a section requiring hospitals to implement a policy for the request

of anatomical gifts upon or near the death of a patient.

- Require the Secretary of State to maintain a donor registry that provided electronic access to procurement organizations.
- Allow people to create and maintain a donor registry that was not established by or under contract with the State, and require it to give an organ procurement organization access to its records of anatomical gifts.
- Make it a felony to purchase or sell a body part for transplant or falsify or damage a document of gift for financial gain, and prescribe criminal penalties.

Senate Bills 711, 712, 714, and 715 would amend various statutes to revise references to provisions of the Uniform Anatomical Gift Law.

Senate Bill 713 would amend the Code of Criminal Procedure to add to the sentencing guidelines the felonies proposed by Senate Bill 710.

Senate Bill 711 would amend Public Act 222 of 1972 (which provides for an official State personal identification card). Senate Bill 712 would amend the Michigan Vehicle Code. Senate Bill 714 would amend Public Act 181 of 1953 (which governs county medical examiners). Senate Bill 715 would

amend the Estates and Protected Individuals Code.

All of the bills are tie-barred to each other. Senate Bills 710 and 713 are described below in further detail.

Senate Bill 710

Anatomical Gift during Donor's Life

Current Law. 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.

The bill would delete these provisions.

Proposed Provisions. Subject to provisions regarding the refusal or revocation of an anatomical gift and people authorized to make a gift on a donor's behalf, an anatomical gift of a donor's body or body part could be made during the donor's life for the purpose of transplantation, therapy, research, or education in the manner provided in the bill by any of the following:

- The donor, if he or she were an adult (a person at least 18 years old) or if he or she were a minor who was emancipated or had been issued a driver license because he or she was at least 16 years old.
- An agent of the donor, unless the power of attorney for health care or other record prohibited the agent from making an anatomical gift.
- The donor's parent, if the donor were an unemancipated minor.

- The donor's guardian.

("Agent" would mean an individual who is authorized to make health care decisions on the principal's behalf by a power of attorney for health care and/or is expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal. "Guardian" would mean a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term would not include a guardian ad litem.)

Gift upon or near Death; Authorized People

Current Law. Upon or immediately before the death of an individual who has not made an anatomical gift, an individual having the following relationship to that person may, in the following order of priority and subject to certain provisions, make an anatomical gift of the deceased's body for a purpose described above:

- A patient advocate designated under the Estates and Protected Individuals Code (EPIC) who is authorized to make such a gift.
- The spouse.
- An adult son or daughter.
- Either parent.
- An adult brother or sister.
- The decedent's guardian at the time of death.
- Another individual who is authorized or under obligation to dispose of the body.

An individual described above may make a gift of all or part of a decedent's body if each of the following circumstances exists:

- An individual with a higher priority to make the gift is not available or is not capable of making the decision at the time of the decedent's death.
- The individual making the gift has not received actual notice that the decedent had expressed an unwillingness to make the gift.
- The individual making the gift has not received actual notice that an individual with equal or greater priority opposes the making of the gift.

A gift made by an individual is not revocable by an individual having a lower priority.

If the donee has actual notice that the decedent had expressed an unwillingness to make the gift, or actual notice that an individual with a higher priority than that of the individual making the gift opposes it, the donee may not accept the gift.

The bill would delete all of these provisions.

Proposed Provisions. Subject to restrictions described below and unless otherwise barred, an anatomical gift of a decedent's body or body part for purpose of transplantation, therapy, research, or education could be made by any member of the following classes of people who was reasonably available, in the following order of priority:

- An agent of the decedent at the time of death who could have made an anatomical gift immediately before the decedent's death.
- The decedent's spouse.
- The decedent's adult children.
- The decedent's adult siblings.
- The decedent's adult grandchildren.
- The decedent's grandparents.
- An adult who exhibited special care and concern for the decedent.
- The people who were acting as the guardians of the person of the decedent at the time of death.
- The people assigned by the State of Michigan to authorize medical care for the decedent at the time of death, including public ward custodians, correctional or mental health facility personnel, or foster parents.
- Any other person who had the authority to dispose of the decedent's body, including unidentified bodies, under EPIC.

("Decedent" would mean a deceased individual whose body or body part was or could be the source of an anatomical gift. The term would include a stillborn infant and, subject to restrictions imposed by law other than Part 101, a fetus.)

If more than one member of a specified class (other than a spouse or adult who exhibited special care and concern) were entitled to make an anatomical gift, a gift could be made by a member of the class unless he or she or a person to whom the gift could pass knew of an objection by another member of the class. If an objection were known, the gift could be

made only by a majority of the members of the class who were reasonably available. ("Know" would mean to have actual knowledge.)

("Reasonably available" would mean able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift. "Procurement organization" would mean an eye bank, organ procurement organization, or tissue bank.)

A person could not make an anatomical gift if, at the time of the decedent's death, a person in a prior class were reasonable available to make or object to the making of the gift.

Will; Other Document of Gift

Current Law. A gift of all or part of a donor's body may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

An anatomical gift also may be made by document of gift other than a will. A gift made by a document of gift becomes effective upon the donor's death. A document of gift may be a personal identification card or operator's or chauffeur's license that contains a statement that the licensee is an organ and tissue donor, along with the signature of the licensee and at least one witness, or a heart insignia. Additionally, a uniform donor card in the form prescribed by the Public Health Code may serve as a document of gift. If the donor does not specify a gift of his or her entire body, the gift is limited to physical parts and does not include the entire body.

A donor who is unable to sign a document of gift may direct another individual to sign it on his or her behalf if the signature of the other individual is made in the presence of the donor and at least one witness. The witness also must sign the document of gift in the donor's presence.

A gift by a designated individual must be made by a document signed by the person or made by his or her telegraphic, electronic, recorded telephonic, or other recorded message.

The bill would delete these provisions.

Proposed Provisions. A donor could make an anatomical gift in any of the following ways:

- By authorizing a statement or symbol indicating that he or she had made an anatomical gift to be imprinted on his or her driver license or identification card.
- In a will.
- During a terminal illness or injury, by any form of communication addressed to at least two adults, at least one of whom was a disinterested witness.

("Disinterested witness" would mean a witness who was not a spouse, child, parent, sibling, grandchild, grandparent, or guardian of or other adult who exhibited special care and concern for the individual who made, amended, revoked, or refused to make an anatomical gift. The term would not include a person to whom an anatomical gift could pass.)

An anatomical gift made by will would take effect upon the donor's death whether or not the will was probated. Invalidation of the will after the donor's death would not invalidate the gift.

A person authorized to make an anatomical gift could do so by a document of gift signed by the person making it or by that person's oral communication that was electronically recorded or was contemporaneously reduced to a record and signed by the individual receiving the oral communication.

("Document of gift" would mean a donor card or other record used to make an anatomical gift. The term would include a statement or symbol on a driver license, identification card, or donor registry.)

A donor or other person authorized to make an anatomical gift under the bill also could make a gift by a donor card or other record signed by the donor or other person or by authorizing that a statement or symbol indicating that the donor had made an anatomical gift be included on a donor registry. If the donor or other person

physically were unable to sign a record, it could be signed by another person at the direction of the donor or other person and would have to be witnessed by two or more adults, at least one of whom was a disinterested witness, who had signed at the request of the donor or other person. Additionally, the record would have to state that it had been signed and witnessed as provided in the bill.

("Sign" would mean that, with the present intent to authenticate or adopt a record, an individual either executed or adopted a tangible symbol, or attached to or logically associated with the record an electronic symbol, sound, or process.)

A document of gift would not need to be delivered during the donor's lifetime to be effective.

The revocation, suspension, expiration, or cancellation of a driver license or identification card upon which an anatomical gift was indicated would not invalidate the gift.

Amendment to & Revocation of Gift

Current Law. An anatomical gift made by will or by a document of gift other than a will is not revocable after the donor's death regardless of the expressed desires of the donor's next of kin who might oppose the donation. If the will, card, or other document, or a copy, has been delivered to a specified donee, the donor may amend or revoke the gift by any of the following methods:

- The execution and delivery to the donee of a signed statement.
- An oral statement made in the presence of two people and communicated to the donee.
- A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee.
- A signed card or document found on the donor's person or in the donor's effects.

Any document of gift that has not been delivered to the donee may be revoked by the donor in the manner prescribed in the Code, or by destruction, cancellation, or mutilation of the document and all executed copies of it.

Any gift made by a will also may be amended or revoked in the manner provided for amendment or revocation of wills, or as provided above.

The bill would delete these provisions.

Proposed Provisions. Subject to other provisions in the bill, a donor or other person authorized to make an anatomical gift could amend or revoke the gift by any of the following means:

- A record signed by the donor, the other person authorized to make an anatomical gift, or another individual acting at the direction of the donor or other person if the donor or other person physically were unable to sign.
- A later-executed document of gift that amended or revoked a previous anatomical gift or portion of a gift, either expressly or by inconsistency.

A record signed by an individual acting at the direction of a donor or authorized other person who was unable to sign would have to be witnessed by two or more adults, at least one of whom was a disinterested witness, who had signed at the request of the donor or other person. Additionally, the record would have to state that it had been signed and witnessed as provided in the bill.

A donor or other person authorized to make an anatomical gift could revoke the gift by the destruction or cancellation of the document, or the portion of the document used to make the gift, with the intent to revoke the gift.

A donor could amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom was a disinterested witness. A donor who made an anatomical gift in a will could amend or revoke it in the manner provided for amendment or revocation of wills or as provided in the bill.

An anatomical gift by an authorized person could be amended or revoked orally or in a record by any member of a prior class who was reasonably available. If more than one member of the prior class were reasonably available, the gift made by an authorized

person could be amended or revoked as follows:

- Amended only if a majority of the reasonably available members agreed to the amendment.
- Revoked only if a majority of the reasonably available members agreed to the revocation or if they were equally divided as to whether to revoke the gift.

A revocation would be effective only if, before an incision had been made to remove a part from the donor's body or before invasive procedures had begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knew of the revocation. ("Technician" would mean an individual determined to be qualified to remove or process body parts by an appropriate organization that was licensed, accredited, or regulated under Federal or State law. The term would include an enucleator.)

Reliance on Statements

Under the bill, in determining whether an anatomical gift had been made, amended, or revoked under Part 101, a person could rely upon representations of an individual listed in the bill (other than the decedent's agent) relating to his or her relationship to the donor or prospective donor unless the person knew that the representation was untrue.

Acceptance or Rejection of Gift

Currently, a donee may accept or reject an anatomical gift. If the donee accepts a gift of the entire body, the person with authority to direct and arrange for the funeral and burial or other disposition of the body under EPIC, subject to the terms of the gift, may authorize embalming and the use of the body in funeral services. If the gift is a physical part of the body, the donee, upon the donor's death and before embalming, must cause the part to be removed without unnecessary mutilation. After removal of the physical part, custody of the remainder of the body vests in the person with the authority to direct and arrange for the funeral and burial or disposition. The holder of a license to practice mortuary science who acts pursuant to the directions of a person alleging to have authority to direct and arrange for the funeral and burial or

disposition of the remainder of the body is relieved of any liability for the funeral and burial or other disposition. A mortuary science licensee may rely on the instructions and directions of any person alleging to be either a donee or a person authorized to donate a body or any physical part of a body. A licensee is not liable for removal of any physical part of a donated body.

The bill would delete all of these provisions.

Specified Donee & Designated Physician

Currently, a gift may be made to a specified or unspecified donee. If the donee is not specified, the attending physician may accept the gift as donee upon or following the donor's death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may, upon or following the donor's death, and in the absence of any expressed indication that the donor desired otherwise, accept the gift as donee. An attending physician who becomes a donee may not participate in the procedures for removing or transplanting a physical part.

If a gift is made to a specified donee, the will, card, or other document, or an executed copy, may be delivered to the donee to expedite the appropriate procedures immediately after death. The document or copy may be deposited in any hospital, bank or storage facility, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession must produce the documents for examination.

A donor may designate in his or her will or other document of gift the physician who is to carry out the procedures necessary to effectuate the gift. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize another physician.

The bill would delete these provisions.

Recipient of Anatomical Gift

Under the bill, an anatomical gift could be made to any of the following people named in the document of gift:

- A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education.
- An individual designated by the person making the anatomical gift if the individual were the recipient of the body part.
- An eye bank or tissue bank.

("Organ procurement organization" would mean a person certified or recertified by the Secretary of the U.S. Department of Health and Human Services as a qualified organ procurement organization.)

If an anatomical gift to an individual could not be transplanted into that person, the body part would pass to an eye bank, tissue bank, or organ procurement organization, as applicable, in the absence of an express, contrary indication by the person making the anatomical gift.

If an anatomical gift of one or more specific body parts or of all body parts were made in a document of gift that did not name a recipient but identified the purpose for which the gift could be used, the following rules would apply:

- If the body part were an eye and the gift were for the purpose of transplantation or therapy, the gift would pass to the appropriate eye bank.
- If the body part were tissue and the gift were for transplantation or therapy, the gift would pass to the appropriate tissue bank.
- If the body part were an organ and the gift were for transplantation or therapy, the gift would pass to the appropriate organ procurement organization as custodian of the organ.
- If the body part were an organ, an eye, or tissue and the gift were for research or education, the gift would pass to the appropriate procurement organization.

If there were more than one purpose of an anatomical gift set forth in the document of gift but the purposes were not set forth in

any priority, the gift would have to be used for transplantation or therapy, if suitable. If the gift could not be used for those purposes, it could be used for research or education.

If an anatomical gift of one or more specific body parts were made in a document of gift that did not name a recipient and did not identify the gift's purpose, the gift could be used for transplantation, therapy, research, or education pursuant to the bill.

If a document of gift specified only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift could be used for transplantation, therapy, research, or education pursuant to the bill.

For purposes of an anatomical gift that could not be transplanted into a specified recipient, a gift for which no recipient or purpose was specified, or a document that specified only a general intent to make a gift, the following rules would apply:

- If the body part were an eye, the gift would pass to the appropriate eye bank.
- If the body part were tissue, the gift would pass to the appropriate tissue bank.
- If the body part were an organ, the gift would pass to the appropriate organ procurement organization as custodian of the organ.

An anatomical gift of an organ for transplantation or therapy, other than a gift designated for a specific person, would pass to the organ procurement organization as custodian of the organ.

If an anatomical gift did not pass as set forth in the bill or the decedent's body or body part were not used for transplantation, therapy, research, or education, custody of the body or body part would pass to the person under obligation to dispose of it.

A person could not accept an anatomical gift if he or she knew that it was not effectively made or if the person knew that the decedent made a refusal that was not revoked. For purposes of this provision, if a person knew that an anatomical gift was made on a document of gift, he or she would be considered to know of any amendment or

revocation or any refusal to make a gift on the same document of gift.

Except as otherwise provided, nothing in Part 101 would affect the allocation of organs for transplantation or therapy.

Refusal to Make Gift

Under the bill, a person could refuse to make an anatomical gift of his or her body or body part by any of the following means:

- A record signed by the individual or another individual acting at his or her direction if he or she physically were unable to sign.
- The individual's will, whether or not it was admitted to probate or invalidated after his or her death.
- Any form of communication made by the individual during his or her terminal illness or injury addressed to at least two adults, at least one of whom was a disinterested witness.

A record signed by an individual other than the donor would have to be witnessed by at least two adults, at least one of whom was a disinterested witness, who signed at the individual's request. Additionally, the record would have to state that it had been signed and witnessed as provided.

An individual who made a refusal could amend or revoke it by any of the following means:

- In the manner provided in the bill for making a refusal.
- By subsequently making an anatomical gift that was inconsistent with the refusal.
- By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke it.

Except as otherwise provided for an unemancipated minor, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift would bar all other people from making an anatomical gift of his or her body or body part.

Except as otherwise provided for an unemancipated minor and subject to

provisions regarding the limitation of an anatomical gift, in the absence of an express, contrary indication by the donor, a person other than the donor would be barred from making, amending, or revoking an anatomical gift of a donor's body or body part if he or she made an anatomical gift or an amendment to an anatomical gift as provided in the bill.

A donor's revocation of an anatomical gift would not be a refusal and would not bar another authorized person from making an anatomical gift.

If a person other than the donor made an unrevoked anatomical gift of his or her body or body part or an amendment to an anatomical gift, another person could not make, amend, or revoke the gift.

A revocation of a gift by a person other than the donor would not bar another person from making a gift as provided in the bill.

In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift of a body part, a gift would be neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or other person.

In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift, a gift of a body part for one or more of the purposes set forth in the bill would not be a limitation on the making of an anatomical gift of the body part for any of the other purposes.

If a donor who was an unemancipated minor died, a parent who was reasonably available could revoke or amend an anatomical gift of the donor's body or body part. If an unemancipated minor who signed a refusal died, a parent who was reasonably available could revoke the refusal.

Search for Document of Gift

Under the bill, as soon as practical, each of the following people would have to make a reasonable search of an individual whom he or she reasonably believed was dead or near death for a document of gift or other information identifying the person as a

donor or as an individual who made a refusal:

- A law enforcement officer, firefighter, paramedic, other emergency rescuer finding the individual, or medical examiner or his or her designee.
- If no other source of the information were immediately available, a hospital, as soon as practical after the individual's arrival.

If a document of gift or a refusal to make an anatomical gift were located by the required search and the person or deceased person to whom it related were taken to a hospital, the person responsible for conducting the search immediately would have to send the document of gift or refusal to the hospital for documentation.

A person would not be subject to criminal or civil liability for failing to discharge the duties imposed by the search provisions but could be subject to administrative sanctions.

Record Search; Examination

Under the bill, upon or after an individual's death, a person in possession of a document of gift or a refusal with respect to the decedent would have to allow examination and copying of the document or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the decedent or by a person to whom the gift could pass.

When a hospital referred an individual at or near death to a procurement organization, the organization would have to make a reasonable search of the records of the Secretary of State and any donor registry that it knew existed for the geographical area in which the individual resided to ascertain whether he or she had made an anatomical gift.

A procurement organization would have to be allowed reasonable access to information in the records of the Secretary of State to ascertain whether an individual at or near death were a donor.

Currently, an anatomical gift authorizes any examination necessary to assure medical acceptability of the gift for the intended purposes. The bill would delete this provision.

Under the bill, when a hospital referred an individual at or near death to a procurement organization, the organization could conduct any reasonable examination necessary to ensure the medical suitability of a body part that was or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor, regardless of a prior decision to withhold or withdraw care (as described below). During the examination period, measures necessary to ensure the medical suitability of the body part could not be withdrawn unless the hospital or procurement organization knew that the individual expressed a contrary intent.

("Prospective donor" would mean an individual who was dead or near death and had been determined by a procurement organization to have a body part that could be medically suitable for transplantation, therapy, research, or education. The term would not include an individual who had made a refusal.)

Unless prohibited by law other than Part 101, at any time after a donor's death, the person to whom a body part would pass could conduct any reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

Unless prohibited by law other than Part 101, an examination could include an examination of all medical and dental records or other sources of medical information pertaining to the donor or prospective donor, including those held by a medical examiner's office, correctional facility, physician's office, or other medical entity.

Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knew that the minor was emancipated, the procurement organization would have to conduct a reasonable search for his or her parents and give them an opportunity to revoke or amend the anatomical gift or revoke the refusal.

Upon referral by a hospital, a procurement organization would have to make a reasonable search for any person listed in the bill who had priority to make an anatomical gift on behalf of a prospective

donor. If a procurement organization received information that an anatomical gift to any other person was made, amended, or revoked, it promptly would have to advise the other person of all relevant information.

Rights to Anatomical Gift

Currently, the rights of the donee created by an anatomical gift are paramount to the rights of others, subject to State laws prescribing powers and duties with respect to autopsies. The bill would delete this provision.

The bill provides that the rights of the person to whom a body part passed would be superior to the rights of all others with respect to the body part. The person could accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and Part 101, a person who accepted an anatomical gift of an entire body could allow embalming, burial, or cremation, and use of the remains in a funeral service. If the gift were of a body part, the person to whom the part passed, upon the death of the donor and before embalming, burial, or cremation, would have to cause the body part to be removed without unnecessary mutilation.

Attending Physician

Currently, the time of death must be determined by a physician who attends the donor at the death or, if none, the physician who certifies the death. The physician may not participate in the procedures for removing or transplanting a physical part. The bill would delete these provisions.

Under the bill, neither the physician who attended the decedent at death nor the physician who determined the time of death could participate in the procedures for removing or transplanting a body part from the decedent.

A physician or technician could remove a donated part from the body of a donor that the physician or technician was qualified to remove.

Eye Donation

Under Part 101, in the absence of designation of a physician or surgeon by the donor or the donee of a decedent's eye or a

physical part of an eye, or if the designated physician or surgeon is not readily available to excise the eye, a licensed physician or person who is certified by a State medical school may perform the operation and arrange for placement of the gift in the nearest eye bank. A State medical school may certify a person as qualified to perform the operation only after he or she has successfully completed a comprehensive course in eye enucleation organized and conducted by the school or a similar course offered by a nationally accredited medical school located in another state. The bill would delete these provisions.

Under Part 102, only an individual who is one of the following may surgically remove a human organ for transplantation, implantation, infusion, injection, or any other medical or scientific purposes:

- A licensed physician.
- An individual acting under the delegatory authority and supervision of a physician.
- For the purpose of surgically removing a human organ that is an eye or a physical part of an eye, an individual certified by a State medical school.

Under the bill, this provision would apply except as otherwise provided in Part 101. The bill would delete the reference to the surgical removal of an eye or part of an eye.

Criminal Penalties

Under the bill, a person who for valuable consideration knowingly purchased or sold a body part for transplantation or therapy, if removal of the part from an individual were intended to occur after death, would be guilty of a felony punishable by imprisonment for up to five years and/or a maximum fine of \$50,000.

A person could charge a reasonable amount, however, for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a body part.

A person who, in order to obtain a financial gain, intentionally falsified, forged, concealed, defaced, or obliterated a document of gift or refusal would be guilty of a felony punishable by imprisonment for up to five years and/or a maximum fine of \$50,000.

Liability

Currently, a person, including a hospital, who acts in good faith in accord with the terms of Part 101 or with the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for the act. The bill would delete this provision.

Under the bill, a person who acted pursuant to Part 101 or with the applicable anatomical gift law of another state, or who attempted in good faith to do so, would not be liable for the act in a civil action, criminal prosecution, or administrative proceeding. Neither the person making an anatomical gift nor his or her estate would be liable for any injury or damage that resulted from the making or use of the gift.

Validity of Document of Gift

The bill specifies that a document of gift would be valid if executed pursuant to any of the following:

- Part 101.
- The laws of the state or country where it was executed.
- The laws of the state or country where the person making the anatomical gift was domiciled, had a place of residence, or was a national at the time the document was executed.

If a document of gift were valid, the law of Michigan would govern its interpretation. A person could presume that a document of gift or amendment of an anatomical gift was valid unless he or she knew that it was not executed validly or was revoked.

The bill would delete a current provision under which a document of gift executed in another state or in a foreign country and in accord with the laws of that state or country is valid as a document of gift in Michigan, even if it does not conform substantially to the form set forth in the Code.

Donor Registry

Under the bill, the organ procurement organization could establish or contract for the establishment of a donor registry. As provided in Public Act 222 of 1972 and the Michigan Vehicle Code, the Secretary of

State would have to inquire of each applicant, licensee, or State identification card holder, in person or by mail, whether he or she agreed to participate in a donor registry. The Secretary of State would have to maintain a record of an individual who indicated a willingness to have his or her name placed on the donor registry. The Secretary of State would have to maintain the registry in a manner that provided electronic access, including the transfer of data, to the organ procurement organization or its successor organization, tissue banks, and eye banks. The Secretary of State would have to administer the registry in a manner that complied with the provisions described below regarding access and personally identifiable information.

A donor registry under the bill would have to be accessible to a procurement organization to allow it to obtain the name, address, and date of birth of people on the registry to determine, at or near death of the donor or a prospective donor, whether he or she had made an anatomical gift. Additionally, it would have to provide electronic access, including the transfer of data for purposes of determining whether an individual had made an anatomical gift on a seven-day-a-week, 24-hour-a-day basis at no cost to the procurement organization.

Personally identifiable information on a donor registry about a donor or prospective donor could not be used or disclosed without the express consent of the donor, prospective donor, or person who made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether he or she had made, amended, or revoked an anatomical gift.

These provisions would not prohibit any person from creating or maintaining a registry that was not established by or under contract with this State. A registry that was not established by or under contract with the State would have to do all of the following:

- Comply with the requirements regarding access and personally identifiable information.
- Within 30 days of its establishment, notify the organ procurement organization.

- Within 30 days of its establishment, give the procurement organization full access to its records of anatomical gifts and amendments to or revocations of anatomical gifts.

Declaration/Advance Directive

If a prospective donor had a declaration or advance health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy could not be withheld or withdrawn unless the declaration expressly provided to the contrary or if the procurement organization determined that the prospective donor's organ was not medically suitable.

("Advance health care directive" would mean a power of attorney for health care or a record signed by a prospective donor containing his or her direction concerning a health care decision for him or her. "Declaration" would mean a record signed by a prospective donor specifying the circumstances under which a life support system could be withheld or withdrawn from the prospective donor.)

Hospitals

The bill would require each hospital in Michigan to enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

The bill would repeal Section 10102a, which requires an individual designated by the chief executive officer (CEO) of a hospital, 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, to request one of the individuals specified under the Code in order of priority to consent to the anatomical gift. The individual may not make a request if one or more of the following conditions exists:

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

Each hospital must maintain a hospital organ donation log sheet on a form provided by the Department of Community Health (DCH). The log sheet must include information specified in the Code.

After making a request for a gift or after the death of a patient or decedent who made a gift, the individual designated by the hospital CEO must complete the log sheet. A summary of the information contained in the log sheets annually must be transmitted by each hospital to the DCH. The summary must include the number of deaths, the number of requests made, the number of consents granted, and the number of bodies or physical parts donated in each category as specified on the log sheet.

A gift made pursuant to a request under these provisions must be executed pursuant to Part 101.

The CEO of each hospital must develop and implement a policy regarding requests for anatomical gifts. At a minimum, the policy must provide for all of the following:

- The designation of individuals who will make requests.
- That if a patient's religious preference is known, a clergy of that denomination will, if possible, be made available upon request to the individuals to whom a request for an anatomical gift is made.
- The development of a support system that facilitates the making of requests.
- The maintenance of the log sheet.

If an individual has made a gift via a document of gift, it is not revocable after his or her death and the individual designated by the hospital CEO is not required to make a request for consent unless the decedent had revoked the gift as prescribed in the Code.

The DCH Director may promulgate rules to establish minimum training standards for people required to make requests and to revise the log sheet.

Section 10102a may not be constructed to authorize the withdrawal or withholding of medical care for a patient who is a possible donor and who is near death.

Uniformity of Law

Part 101 specifies that it is subject to Michigan laws prescribing powers and duties with respect to autopsies. Part 101 must be construed to effectuate its general purpose to make uniform of the law of those states that enact it. The bill would delete these provisions.

The bill would require that, in applying and construing Part 101, consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Electronic Signatures

The bill provides that Part 101 would modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but would not modify, limit, or supersede 15 USC 7001(a), or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

(Section 7001(a) provides that, notwithstanding any statute, regulation, or other rule of law with respect to any transaction in or affecting interstate or foreign commerce, a signature, contract, or other record relating to the transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and a contract relating to the transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.)

Section 7003(b) provides that the provisions of Section 7001 do not apply to court orders or notices, or official court documents required to be executed in connection with court proceedings; or any notice of the cancellation or termination of utility services; default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, an individual's primary residence; the cancellation or termination of health insurance or life insurance benefits; the recall or material failure of a product; or any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.)

Administrative Sanctions

Under Part 102, after notice of intent to an applicant or licensee to deny, limit, suspend, or revoke the applicant's or licensee's license or certification and an opportunity for a hearing, the DCH may deny, limit, suspend, or revoke the license or certification or impose an administrative fine on a licensee if certain grounds exist, including failure to comply with Section 10102a(7). That section requires a hospital CEO to develop and implement a policy regarding requests for consent to the gift of all or any part of a decedent's body. The bill would eliminate the reference to that section, and instead allow the DCH to impose administrative sanctions on a licensee for a failure to comply with Section 10115, which, under the bill, would require each hospital to enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Senate Bill 713

The bill would include in the sentencing guidelines purchasing or selling a body part of a deceased individual for transplantation or therapy, and falsifying, concealing, or defacing a document of anatomical gift for financial gain. These offenses would be Class E felonies against public order with a five-year statutory maximum.

MCL 333.10101 et al. (S.B. 710)
28.292 (S.B. 711)
257.307 & 257.310 (S.B. 712)
777.13n (S.B. 713)
52.209 (S.B. 714)
700.3206 et al. (S.B. 715)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 710 & 713

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses relating to anatomical gifts. The fine and maximum sentence for purchasing or selling anatomical gifts would be the same as in Federal law. An offender convicted of a Class E offense under the bills would receive a sentencing guidelines

minimum sentence range of 0-3 months to 24-38 months. To the extent that the bills resulted in increased convictions or incarceration time, local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$31,000. Additional penal fine revenue would benefit public libraries.

The bills would have no fiscal impact on the Department of State or the Department of Community Health.

Senate Bills 711, 712, 714, & 715

The bills would have no fiscal impact on State or local government.

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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.