

Act No. 39  
Public Acts of 2008  
Approved by the Governor  
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**STATE OF MICHIGAN**  
**94TH LEGISLATURE**  
**REGULAR SESSION OF 2008**

**Introduced by Reps. Condino, Alma Smith, Bieda, Byrnes, Green, Tobocman, Miller, Leland, Angerer, Donigan and Dean**

# **ENROLLED HOUSE BILL No. 4940**

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending the heading of part 101 and sections 10101, 10102, 10103, 10104, 10105, 10106, 10107, 10108, 10109, 10204, and 20165 (MCL 333.10101, 333.10102, 333.10103, 333.10104, 333.10105, 333.10106, 333.10107, 333.10108, 333.10109, 333.10204, and 333.20165), section 10102 as amended by 2003 PA 62, section 10104 as amended by 2005 PA 140, section 10108 as amended by 2006 PA 301, section 10204 as amended by 1999 PA 60, and section 20165 as amended by 1998 PA 108, and by adding sections 10110, 10111, 10112, 10113, 10114, 10115, 10116, 10117, 10118, 10119, 10120, 10121, 10122, and 10123; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

PART 101

REVISED UNIFORM ANATOMICAL GIFT LAW

Sec. 10101. This part shall be known and may be cited as the "revised uniform anatomical gift law".

Sec. 10102. As used in this part:

- (a) "Adult" means an individual who is at least 18 years of age.
- (b) "Agent" means an individual who meets 1 or more of the following requirements:
  - (i) Is authorized to make health care decisions on the principal's behalf by a power of attorney for health care.

(ii) Is expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(c) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(d) "Body part" means an organ, eye, or tissue of a human being. The term does not include the whole body.

(e) "Decedent" means a deceased individual whose body or body part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to this subdivision and restrictions imposed by law other than this part, a fetus. The term does not include a blastocyst, embryo, or fetus that is the subject of an abortion. As used in this subdivision, "abortion" means that term as defined in section 17015.

(f) "Disinterested witness" means a witness who is not a spouse, child, parent, sibling, grandchild, grandparent, or guardian of or other adult who exhibited special care and concern for the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to which an anatomical gift could pass under section 10111.

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

(h) "Donor" means an individual whose body or body part is the subject of an anatomical gift.

(i) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts as provided for in section 10120.

(j) "Driver license" means an operator's or chauffeur's license or permit issued to an individual by the secretary of state under chapter III of the Michigan vehicle code, 1949 PA 300, MCL 257.301 to 257.329, for that individual to operate a vehicle, whether or not conditions are attached to the license or permit.

(k) "Eye" means a human eye or any portion of a human eye.

(l) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(m) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(n) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(o) "Identification card" means an official state personal identification card issued by the secretary of state under 1972 PA 222, MCL 28.291 to 28.300.

(p) "Know" means to have actual knowledge.

(q) "Minor" means an individual who is under 18 years of age.

(r) "Organ" means a human kidney, liver, heart, lung, pancreas, or intestine or multivisceral organs when transplanted at the same time as an intestine.

(s) "Organ procurement organization" means a person certified or recertified by the secretary of the United States department of health and human services as a qualified organ procurement organization under 42 USC 273(b).

(t) "Parent" means a parent whose parental rights have not been terminated.

(u) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(v) "Physician" means an individual authorized to practice medicine or osteopathic medicine and surgery under the law of any state.

(w) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

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

(y) "Reasonably available" means 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.

(z) "Recipient" means an individual into whose body a decedent's body part has been or is intended to be transplanted.

(aa) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(bb) "Refusal" means a record created under section 10107 that expressly refuses to make an anatomical gift of an individual's body or body part.

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

- (i) Executes or adopts a tangible symbol.
- (ii) Attaches to or logically associates with the record an electronic symbol, sound, or process.

(dd) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(ee) "Technician" means an individual determined to be qualified to remove or process body parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(ff) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(gg) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(hh) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Sec. 10103. This part applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Sec. 10104. Subject to section 10108, an anatomical gift of a donor's body or body part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 10105 by any of the following:

- (a) The donor, if the donor is an adult or if the donor is a minor and meets 1 or more of the following requirements:
  - (i) Is emancipated.
  - (ii) Has been issued a driver license or identification card because the donor is at least 16 years of age.
- (b) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift.
- (c) A parent of the donor, if the donor is an unemancipated minor.
- (d) The donor's guardian.

Sec. 10105. (1) A donor may make an anatomical gift by doing any of the following:

- (a) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver license or identification card.
- (b) In a will.
- (c) During a terminal illness or injury of the donor, by any form of communication addressed to at least 2 adults, at least 1 of whom is a disinterested witness. However, the physician who attends the donor during the terminal illness or injury shall not act as a recipient of the communication under this subdivision.
- (d) As provided in subsection (2).

(2) A donor or other person authorized to make an anatomical gift under section 10104 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall meet all of the following requirements:

- (a) Be witnessed by at least 2 adults, at least 1 of whom is a disinterested witness, who have signed at the request of the donor or the other person.
- (b) State that it has been signed and witnessed as provided in subdivision (a).
- (3) Revocation, suspension, expiration, or cancellation of a driver license or identification card upon which an anatomical gift is indicated does not invalidate the gift.
- (4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Sec. 10106. (1) Subject to section 10108, a donor or other person authorized to make an anatomical gift under section 10104 may amend or revoke an anatomical gift by any of the following means:

- (a) A record signed by any of the following:
  - (i) The donor.
  - (ii) The other person authorized to make an anatomical gift under section 10104.

(iii) Subject to subsection (2), another individual acting at the direction of the donor or the other person authorized to make an anatomical gift under section 10104 if the donor or other person is physically unable to sign.

(b) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(2) A record signed pursuant to subsection (1)(a)(iii) shall meet all of the following requirements:

(a) Be witnessed by at least 2 adults, at least 1 of whom is a disinterested witness, who have signed at the request of the donor or the other person.

(b) State that it has been signed and witnessed as provided in subdivision (a).

(3) Subject to section 10108, a donor or other person authorized to make an anatomical gift under section 10104 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(4) A donor may 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 2 adults, at least 1 of whom is a disinterested witness.

(5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (1).

Sec. 10107. (1) An individual may refuse to make an anatomical gift of his or her body or body part by any of the following means:

(a) A record signed by either of the following:

(i) The individual.

(ii) Subject to subsection (2), another individual acting at the direction of the individual if the individual is physically unable to sign.

(b) The individual's will, whether or not the will is admitted to probate or invalidated after his or her death.

(c) Any form of communication made by the individual during his or her terminal illness or injury addressed to at least 2 adults, at least 1 of whom is a disinterested witness.

(2) A record signed pursuant to subsection (1)(a)(ii) shall meet all of the following requirements:

(a) Be witnessed by at least 2 adults, at least 1 of whom is a disinterested witness, who have signed at the request of the individual.

(b) State that it has been signed and witnessed as provided in subdivision (a).

(3) An individual who has made a refusal may amend or revoke the refusal by any of the following means:

(a) In the manner provided in subsection (1) for making a refusal.

(b) By subsequently making an anatomical gift pursuant to section 10105 that is inconsistent with the refusal.

(c) 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 the refusal.

(4) Except as otherwise provided in section 10108(8), 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 of his or her body or body part bars all other persons from making an anatomical gift of the individual's body or body part.

Sec. 10108. (1) Except as otherwise provided in subsection (7) and subject to subsection (6), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or body part if the donor made an anatomical gift of the donor's body or body part under section 10105 or an amendment to an anatomical gift of the donor's body or body part under section 10106.

(2) A donor's revocation of an anatomical gift of the donor's body or body part under section 10106 is not a refusal and does not bar another person specified in section 10104 or 10109 from making an anatomical gift of the donor's body or body part under section 10105 or 10110.

(3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or body part under section 10105 or an amendment to an anatomical gift of the donor's body or body part under section 10106, another person may not make, amend, or revoke the gift of the donor's body or body part under section 10110.

(4) A revocation of an anatomical gift of a donor's body or body part under section 10106 by a person other than the donor does not bar another person from making an anatomical gift of the body or body part under section 10105 or 10110.

(5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 10104, an anatomical gift of a body part is neither a refusal to give another body part nor a limitation on the making of an anatomical gift of another body part at a later time by the donor or other person.

(6) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 10104, an anatomical gift of a body part for 1 or more of the purposes set forth in section 10104 is not a limitation on the making of an anatomical gift of the body part for any of the other purposes by the donor or any other person under section 10105 or 10110.

(7) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or body part.

(8) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Sec. 10109. (1) Subject to subsections (2) and (3) and unless barred by section 10107 or 10108, an anatomical gift of a decedent's body or body part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed as follows:

(a) An agent of the decedent at the time of death who could have made an anatomical gift under section 10104(b) immediately before the decedent's death.

(b) The spouse of the decedent.

(c) Adult children of the decedent.

(d) Parents of the decedent.

(e) Adult siblings of the decedent.

(f) Adult grandchildren of the decedent.

(g) Grandparents of the decedent.

(h) An adult who exhibited special care and concern for the decedent.

(i) The persons who were acting as the guardians of the person of the decedent at the time of death.

(j) The persons 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.

(k) Any other person that has the authority to dispose of the decedent's body, including unidentified bodies, under section 3206 of the estates and protected individuals code, 1998 PA 386, MCL 700.3206.

(2) If there is more than 1 member of a class listed in subsection (1)(a), (c), (d), (e), (f), (g), or (i) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 10111 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(3) A person shall not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) is reasonably available to make or to object to the making of an anatomical gift.

Sec. 10110. (1) A person authorized to make an anatomical gift under section 10109 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(2) Subject to subsection (3), an anatomical gift by a person authorized under section 10109 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than 1 member of the prior class is reasonably available, the gift made by a person authorized under section 10109 may be amended or revoked as follows:

(a) Amended only if a majority of the reasonably available members agree to the amending of the gift.

(b) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(3) A revocation under subsection (2) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Sec. 10111. (1) An anatomical gift may be made to any of the following persons named in the document of gift:

(a) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education.

(b) Subject to subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the body part.

(c) An eye bank or tissue bank.

(2) If an anatomical gift to an individual under subsection (1)(b) cannot be transplanted into the individual, the body part passes pursuant to subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of 1 or more specific body parts or of all body parts is made in a document of gift that does not name a person described in subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the body part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(b) If the body part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the body part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the body part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(4) For the purpose of subsection (3) and as otherwise specified in this section, if there is more than 1 purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of 1 or more specific body parts is made in a document of gift that does not name a person described in subsection (1) and does not identify the purpose of the gift, the gift may be used for transplantation, therapy, research, or education pursuant to subsections (4) and (7).

(6) If a document of gift specifies 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 may be used for transplantation, therapy, research, or education pursuant to subsections (4) and (7).

(7) For purposes of subsections (2), (5), and (6), the following rules apply:

(a) If the body part is an eye, the gift passes to the appropriate eye bank.

(b) If the body part is tissue, the gift passes to the appropriate tissue bank.

(c) If the body part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b), passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) or the decedent’s body or body part is not used for transplantation, therapy, research, or education, custody of the body or body part passes to the person under obligation to dispose of the body or body part.

(10) A person shall not accept an anatomical gift if the person knows that the gift was not effectively made under section 10105 or 10110 or if the person knows that the decedent made a refusal under section 10107 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is considered to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b), nothing in this part affects the allocation of organs for transplantation or therapy.

Sec. 10112. (1) As soon as practical after any necessary medical intervention or treatment, each of the following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(a) A law enforcement officer, firefighter, paramedic, other emergency rescuer finding the individual, or medical examiner or his or her designee.

(b) If no other source of the information is immediately available, a hospital, as soon as practical after the individual’s arrival at the hospital.

(2) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (1)(a) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall immediately send the document of gift or refusal to the hospital for documentation.

(3) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

Sec. 10113. (1) A document of gift need not be delivered during the donor’s lifetime to be effective.

(2) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the decedent shall allow examination and copying of the document of gift 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 which the gift could pass under section 10111.

Sec. 10114. (1) When a hospital refers an individual at or near death to a procurement organization, the procurement organization shall make a reasonable search of the records of the secretary of state and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization shall be allowed reasonable access to information in the records of the secretary of state to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a body part that is 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 in section 10121. During the examination period, measures necessary to ensure the medical suitability of the body part shall not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this part, at any time after a donor's death, the person to which a body part passes under section 10111 may conduct any reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

(5) Unless prohibited by law other than this part, an examination under subsection (3) or (4) may 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.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows that the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under subsection (1), a procurement organization shall make a reasonable search for any person listed in section 10109 that has priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to section 10111(9), the rights of the person to which a body part passes under section 10111 are superior to the rights of all others with respect to the body part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this part, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a body part, the person to which the body part passes under section 10111, upon the death of the donor and before embalming, burial, or cremation, shall cause the body part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a body part from the decedent.

(10) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Sec. 10115. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Sec. 10116. (1) Except as otherwise provided in subsection (2), a person that for valuable consideration knowingly purchases or sells a body part for transplantation or therapy if removal of the body part from an individual is intended to occur after the individual's death is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00, or both.

(2) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a body part.

Sec. 10117. A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00, or both.

Sec. 10118. (1) A person that acts in good faith in accord with the terms of this part or with the anatomical gift laws of another state or a foreign country is not liable for damages in any civil or administrative action or subject to prosecution in any criminal proceeding.

(2) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(3) In determining whether an anatomical gift has been made, amended, or revoked under this part, a person may rely upon representations of an individual listed in section 10109(1)(b), (c), (d), (e), (f), (g), or (h) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Sec. 10119. (1) A document of gift is valid if executed pursuant to any of the following:

(a) This part.

(b) The laws of the state or country where it was executed.

(c) 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 of gift was executed.

(2) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(3) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

Sec. 10120. (1) The organ procurement organization may establish or contract for the establishment of a donor registry.

(2) As provided for in section 2 of 1972 PA 222, MCL 28.292, and section 310 of the Michigan vehicle code, 1949 PA 300, MCL 257.310, the secretary of state shall inquire of each applicant, licensee, or state identification card holder, in person or by mail, whether the individual agrees to participate in a donor registry as described in this part. The secretary of state shall maintain a record of an individual who indicates a willingness to have his or her name placed on the donor registry. The secretary of state shall maintain the donor registry in a manner that provides electronic access, including, but not limited to, the transfer of data, to the organ procurement organization or its successor organization, tissue banks, and eye banks. The secretary of state shall administer the donor registry in a manner that complies with subsections (3) and (4).

(3) A donor registry under this section shall meet all of the following requirements:

(a) Be accessible to a procurement organization to allow it to obtain the name, address, and date of birth of persons on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made an anatomical gift.

(b) Provide electronic access, including, but not limited to, the transfer of data for purposes of subdivision (a) on a 7-day-a-week, 24-hour-a-day basis at no cost to the procurement organization.

(4) Personally identifiable information on a donor registry about a donor or prospective donor shall not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(5) This section does not prohibit any person from creating or maintaining a donor registry that is not established by or under contract with this state. A donor registry that is not established by or under contract with this state shall do all of the following:

(a) Comply with subsections (3) and (4).

(b) Within 30 days of its establishment, notify the organ procurement organization of its establishment.

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

Sec. 10121. (1) As used in this section:

(a) "Advance health care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor. Advance health care directive includes a durable power of attorney and designation of patient advocate under part 5 of article V of the estates and protected individuals code, 1998 PA 386, MCL 700.5501 to 700.5520.

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

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

(2) If a prospective donor has a declaration or advance health care directive or is enrolled in a hospice program, and the terms of the declaration, directive, or enrollment and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a body part for transplantation or therapy, the prospective donor's attending physician, the prospective donor, and, if appropriate, the hospice medical director shall confer to resolve the conflict. If the prospective donor is incapable of resolving the



conflict, an agent acting under the prospective donor's declaration, directive, or hospice enrollment, or, if none or the agent is not reasonably available, another person authorized by law other than this part to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The authorized parties shall attempt to resolve the conflict as expeditiously as possible. Authorized parties may obtain information relevant to the resolution of the conflict from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 10109. Before resolution of the conflict, measures necessary to ensure the medical suitability of the body part are permissible if they are not contraindicated by appropriate end-of-life care as determined by the stated wishes of the prospective donor, by a written advance health care directive, or, if appropriate, by the hospice medical director.

Sec. 10122. In applying and construing this part, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 10123. This part modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC 7001(a), or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

Sec. 10204. (1) Except as otherwise provided in subsection (2), a person shall not knowingly acquire, receive, or otherwise transfer a human organ or part of a human organ for valuable consideration for any purpose, including but not limited to transplantation, implantation, infusion, injection, or other medical or scientific purpose. A person who violates this subsection is guilty of a felony.

(2) Subsection (1) does not prohibit 1 or more of the following practices:

(a) The removal and use of a human cornea pursuant to section 10202, or the removal and use of a human pituitary gland pursuant to section 2855.

(b) An anatomical gift pursuant to part 101, or the acquisition or distribution of bodies or parts by the department pursuant to sections 2652 to 2663.

(c) Financial assistance payments provided under a plan of insurance or other health care coverage.

(3) Except as otherwise provided in part 101, only an individual who is 1 of the following may surgically remove a human organ for transplantation, implantation, infusion, injection, or any other medical or scientific purpose:

(a) A physician licensed under article 15.

(b) An individual acting under the delegatory authority and supervision of a physician pursuant to section 16215(2), but not including an individual whose license has been suspended under article 15. This subdivision includes, but is not limited to, an individual described in section 16215(3).

(c) An individual residing in another state and authorized to practice allopathic medicine or osteopathic medicine and surgery in that state who is called into this state by a physician licensed under article 15 and is authorized by a hospital licensed under article 17 to surgically remove 1 or more of the following organs for transport back to the other state:

(i) A heart.

(ii) A liver.

(iii) A lung.

(iv) A pancreas.

(v) A kidney.

(vi) All or part of an intestine.

(vii) Any other human organ specified by rule promulgated by the department under subsection (6).

(4) An individual who violates subsection (3) is guilty of a felony.

(5) As used in this section:

(a) "Human organ" means the human kidney, liver, heart, lung, pancreas, intestine, bone marrow, cornea, eye, bone, skin, cartilage, dura mater, ligaments, tendons, fascia, pituitary gland, and middle ear structures and any other human organ specified by rule promulgated by the department under subsection (6). Human organ does not include whole blood, blood plasma, blood products, blood derivatives, other self-replicating body fluids, or human hair.

(b) "Valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the medical expenses and expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the human organ.

(6) The department may promulgate rules to specify human organs in addition to the human organs listed in subsection (3)(c) or (5)(a).

Sec. 20165. (1) Except as otherwise provided in this section, 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 department may deny, limit, suspend, or revoke the license or certification or impose an administrative fine on a licensee if 1 or more of the following exist:

(a) Fraud or deceit in obtaining or attempting to obtain a license or certification or in the operation of the licensed health facility or agency.

(b) A violation of this article or a rule promulgated under this article.

(c) False or misleading advertising.

(d) Negligence or failure to exercise due care, including negligent supervision of employees and subordinates.

(e) Permitting a license or certificate to be used by an unauthorized health facility or agency.

(f) Evidence of abuse regarding a patient's health, welfare, or safety or the denial of a patient's rights.

(g) Failure to comply with section 10115.

(h) Failure to comply with part 222 or a term, condition, or stipulation of a certificate of need issued under part 222, or both.

(i) A violation of section 20197(1).

(2) The department may deny an application for a license or certification based on a finding of a condition or practice that would constitute a violation of this article if the applicant were a licensee.

(3) Denial, suspension, or revocation of an individual emergency medical services personnel license under part 209 is governed by section 20958.

(4) If the department determines under subsection (1) that a health facility or agency has violated section 20197(1), the department shall impose an administrative fine of \$5,000,000.00 on the health facility or agency.

Enacting section 1. This amendatory act takes effect May 1, 2008.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

(a) House Bill No. 4941.

(b) House Bill No. 4945.

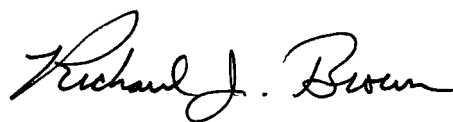
(c) Senate Bill No. 712.

(d) Senate Bill No. 713.


(e) Senate Bill No. 714.

Enacting section 3. Section 10102a of the public health code, 1978 PA 368, MCL 333.10102a, is repealed.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor