

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 756

(Senator Kelley, *et al.*)

Judicial Proceedings

Health and Government Operations

Maryland Revised Uniform Anatomical Gift Act

This bill establishes the Maryland Revised Anatomical Gift Act, replacing the existing Maryland Anatomical Gift Act.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources as the bill basically outlines current procedures in handling organ and tissue requests. The criminal penalty provisions of the bill are not expected to materially affect State finances or operations.

Local Effect: The criminal penalty provisions of the bill are not expected to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: The bill applies to donations of all or part of a human body taking effect after the donor's death for the purpose of transplantation, therapy, research, training, or education. The bill contains various provisions, including those relating to:

- who may make an anatomical gift during the life of a donor (taking effect after the donor's death) and how a donor may make a gift, including by a "document of gift," defined as a donor card or other record such as a statement or symbol on a driver's license, identification card, or donor registry;

- classifications of individuals, in order of priority, who may make an anatomical gift of a donor's body or part after the donor's death;
- how an anatomical gift may be revoked or amended and how an individual may indicate a refusal to make an anatomical gift of the individual's body or part;
- the relation between, and priorities of, actions taken by the donor and other authorized persons, with respect to making, amending, revoking, or refusing an anatomical gift;
- to whom an anatomical gift may be made with a document of gift and guidance for the disposition of an anatomical gift made with a document of gift;
- rights of a donee;
- requirements of, and procedures to be followed by, various individuals and entities, including law enforcement officers, firefighters, paramedics, or other emergency rescuers; hospitals; physicians; procurement organizations; the Motor Vehicle Administration (MVA); and the Office of the Chief Medical Examiner (OCME) with respect to anatomical gifts;
- penalties for the knowing purchase or sale, for transplantation or therapy of a body part intended to be removed after the individual's death and specified actions taken with respect to a document of gift (or an amendment or revocation) or refusal (such as intentionally falsifying, forging, concealing, etc.) in order to obtain financial gain;
- protections from liability for a person making an anatomical gift and a person that acts or attempts to act in good faith in accordance with the provisions of the bill or the applicable law of another state;
- resolution of conflicts between an advance directive and an anatomical gift; and
- coordination between OCME and procurement organizations (an organ procurement organization designated by the Secretary of the U.S. Department of Health and Human Services, an eye bank, or a tissue bank) and relevant authorizations relating to anatomical gifts.

Under the bill, persons eligible to make an anatomical gift during the life of the donor include an adult donor; a minor who is emancipated or eligible to apply for a driver's license; an agent of a donor (unless prohibited by a power of attorney for health care or other record); a parent of a donor, if the donor is an unemancipated minor; or a guardian of a donor.

In addition, the bill requires each hospital in the State to enter into an agreement or affiliation with a procurement organization. Directions given by a person authorized under the bill to make, amend, revoke, or refuse to make an anatomical gift of a decedent's body or part must be recorded in the decedent's medical record.

Current Law: The existing Maryland Anatomical Gift Act also applies only to gifts of a body or parts of a body to be made after the death of a donor. Any individual who is age 18 or older and competent to execute a will may make an anatomical gift of all or any part of the individual's body for any one or more of the purposes specified under the Act. The existing Act includes provisions relating to:

- classifications of individuals, in order of priority, who may make an anatomical gift of a donor's body or part after the donor's death or during a terminal illness;
- individuals and entities eligible to receive anatomical gifts;
- methods of making and revoking anatomical gifts;
- rights of a donee;
- circumstances under which the chief medical examiner, or deputy or assistant medical examiner, may provide an organ or tissue upon the request of a federally designated organ procurement organization or tissue bank and related protections from liability; and
- circumstances under which the chief medical examiner, or deputy or assistant medical examiner, may provide corneal tissue upon the request of specified eye banks and related protections from liability.

Chapters 213 and 214 of 2008 required the Secretary of Health and Mental Hygiene to contract with a qualified nonprofit entity, using funds from the Organ and Tissue Donor Awareness Fund or any other appropriate funds, for the establishment, maintenance, and operation of a donor registry. Additionally, Chapters 213 and 214 authorized a donor to make an anatomical gift by authorizing a statement or symbol to be included in a donor

registry. MVA is also required to cooperate with the nonprofit entity contracted with for the purpose of transferring all relevant information regarding a donor's making, amendment to, or revocation of an anatomical gift to the donor registry.

The Organ and Tissue Donor Awareness Fund is a special, continuing, nonlapsing fund consisting of voluntary \$1 contributions made during the driver's license application and renewal process. The fund is intended to be used to promote public education and awareness about organ, tissue, and eye donations and, pursuant to Chapter 457 of 2006, the Secretary of Health and Mental Hygiene is required to contract with a qualified, independent, nonprofit third party to accomplish that purpose.

Background: The Maryland Revised Anatomical Gift Act is a modified version of the 2006 Revised Uniform Anatomical Gift Act (UAGA) promulgated and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws (NCCUSL). NCCUSL adopted two previous uniform Acts in 1968 and 1987. According to NCCUSL, the 1968 Act was adopted in all states, though the 1987 Act was adopted by only 26 states (not including Maryland) and many states since then have adopted nonuniform amendments. The 2006 Revised UAGA, among other things, is generally intended to resolve inconsistencies among states and reduce impediments to transplantation. A total of 45 states, the District of Columbia, and the U.S. Virgin Islands have adopted the Revised UAGA.

According to a prefatory note of the 2006 Revised UAGA, the Act is designed to encourage the making of anatomical gifts; is designed to honor and respect the autonomy of individuals to make or not to make an anatomical gift of their body or parts; and preserves the current anatomical gift system founded upon altruism by requiring a positive affirmation of an intent to make a gift and prohibiting the sale and purchase of organs.

As required by Chapters 213 and 214 of 2008, the Department of Health and Mental Hygiene contracted with a nonprofit organization, Donate Life Maryland (DLMD) to establish, maintain, and operate a donor registry. DLMD was established in 2007 by the Living Legacy Foundation of Maryland, the Medical Eye Bank of Maryland, and Washington Regional Transplant Community to register organ, eye, and tissue donors. DLMD allows individuals to commit to becoming an organ, eye, and/or tissue donor securely online. The registry ensures every effort will be made to honor donor wishes when they die and is available to take calls 24 hours a day, 7 days a week. DLMD currently has an information-sharing program with MVA so all donor designation records can be stored in a central and secure place. As of 2009, DLMD had registered over two million donors.

State Fiscal Effect: Any unanticipated fiscal effects that the bill's requirements have on the operations of the DLMD registry will be offset through the use of funds from the Organ and Tissue Donor Awareness Fund, which has a projected fund balance of more than \$2.4 million for fiscal 2011.

MVA advises that a maximum of 100 hours of programming will be needed to modify the Driver's License System to reflect changes required the bill. Additionally, certain brochures and the MVA website will also need to be modified. It is anticipated that these changes can be performed with existing resources.

Additional Information

Prior Introductions: A nearly identical bill, HB 1451 of 2010, was heard by the House Health and Government Operations Committee but was later withdrawn.

Cross File: HB 1153 (Delegate Barve) – Health and Government Operations.

Information Source(s): National Conference of Commissioners on Uniform State Laws; Baltimore, Carroll, Cecil, Harford, Montgomery, and St. Mary's counties; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Register of Wills; Maryland Department of Transportation; University of Maryland Medical System; Department of Legislative Services

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