

SESSION OF 2019

SUPPLEMENTAL NOTE ON SENATE BILL NO. 194

As Recommended by Senate Committee on
Public Health and Welfare

Brief*

SB 194 would amend the Revised Uniform Anatomical Gift Act (Act) and establish legislative findings and declarations with regard to the inherent right of an individual to make a decision about whether to be an organ donor and the conditions of use of an anatomical gift for any authorized purpose under the Act. The bill would require the Kansas Department of Health and Environment (KDHE) to adopt rules and regulations defining the inherent right and creating a mechanism for an individual to make an anatomical gift under the Act to exercise such inherent right. The bill would also require the Division of Vehicles (of the Department of Revenue) to notify individuals indicating a willingness to have their name placed on the organ donor registry that information regarding an authorized donor's exercise of the inherent right would be provided to the organ donation registry. The provisions in the bill regarding the inherent right would be part of and supplemental to the Act. The bill would also make technical amendments.

Legislative Findings and Declarations

The bill would establish the following legislative findings and declarations:

- The decisions of whether to make an anatomical gift and thereafter to authorize an anatomical gift or to make a decision whether to become a living

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

organ donor are deeply personal decisions of great importance and significance made under careful consideration by the living organ donor or the person authorized to make an anatomical gift;

- The donation of anatomical gifts serves important public health needs, including medical research and education, therapy, or transplantation that improve the health and welfare of the citizens and residents of the state of Kansas; and
- Any citizen or resident of the state of Kansas has the inherent right to make a decision about whether to be a donor and thereafter about the conditions of use of an anatomical gift for any authorized purpose under the Act.

Inherent Right

The bill would establish the following:

- Any citizen or resident of Kansas authorized to make an anatomical gift under the Act has an inherent right to make a decision whether to make an anatomical gift and about the conditions of use of an anatomical gift of all or part of the donor's body for transplantation, therapy, research, or education; and
- Any decision by a citizen or resident of Kansas authorized to make an anatomical gift under the Act about the use of an anatomical gift would be prohibited from discriminating by reason of any prohibited basis for discrimination provided in the Kansas Act Against Discrimination, state statutes addressing discrimination in employment, or the state statute on non-discrimination in organ transplantation.

Rules and Regulations

The bill would require KDHE adopt all necessary rules and regulations to be effective on or before July 1, 2020. The bill would require the rules and regulations define the inherent right described in the Act and create a mechanism for a citizen or resident of Kansas who is authorized to make an anatomical gift under the Act to exercise such inherent right.

The bill would allow the definition of inherent right to include conditions of use of an anatomical gift not recognized in the Act. In developing the rules and regulations required, the bill would require KDHE to seek input from experts in the field of organ procurement and organ transplantation as deemed appropriate by the Secretary of Health and Environment (Secretary) or the Secretary's designee, at the Secretary's sole discretion.

The bill would require the rules and regulations to include:

- A mechanism for the person authorized to make an anatomical gift under the Act to exercise the inherent right when applying or reapplying for a permit, license, or other identification card from the Division of Vehicles;
- A process to communicate to the statewide organ and tissue donor registry established and operated under state law that an individual authorized to make an anatomical gift has exercised the inherent right;
- A process requiring the Kansas federally designated organ procurement organization to conduct outreach to individuals listed in the statewide donor registry to provide such individuals with information about the inherent right and directions on how to exercise such right; and

- Any other provisions necessary to implement and administer the provisions of the Act pertaining to the inherent right.

Superior Right

The bill would establish the inherent right is superior to the rights of any other person with respect to the part, including the rights of the person to whom a part passes, when the inherent right is exercised by a citizen or resident of Kansas authorized to make an anatomical gift under the Act until the anatomical gift is used in transplantation, therapy, research, or education, by the person who may receive an anatomical gift under state law to whom the gift passes.

Duties of the Division of Vehicles

In accordance with the procedures and requirements described in state statutes regarding the expiration and renewal of driver's licenses and non-driver's identification cards, on the effective date of the rules and regulations required to be adopted to address the inherent right, the Division of Vehicles would be required to:

- Provide notice to any individual who indicates a willingness to have their name placed on the organ donor registry that information regarding the authorized donor's exercise of the inherent right will be provided to the organ donation registry maintained by the Kansas federally designated organ procurement organization; and
- Provide information regarding the exercise of the inherent right to the organ donation registry.

The disclosures and notices described above would be in addition to the required disclosures and notices to the organ donor registry authorized in the statutes referenced above.

Deadline for Adoption and Effective Date of Rules and Regulations

The provisions of Section 1 of the bill regarding the inherent right would be null and void and have no force and effect if the rules and regulations required to be adopted are not adopted to be effective prior to January 1, 2023.

Amendments to Statutes Regarding Driver's Licenses and Non-Driver Identification Cards

The bill would amend statutes pertaining to driver's licenses and non-driver identification cards to clarify when compliance with provisions of the Act is required in statute, compliance with rules and regulations adopted under the Act would also be required.

Amendments to the Act

The bill would amend the Act to clarify the following:

- The rights of the person to whom a part passes are subject to the superior inherent right of the donor; and
- An individual who agrees to have his or her name in the first person consent organ and tissue donor registry has given full legal consent consistent with the exercise of the inherent right to the donation of the individual's organs or tissues upon the individual's death as recorded in the registry.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of Senator Denning. In the Senate Committee hearing, a representative of the University of Kansas Health System and a private citizen

provided proponent testimony. Proponents generally stated organ donation is a gift and donors should have a choice to keep the donation in their local communities, and areas in the country with shortages should focus on increasing donations and building a strong organ donor program as Kansas has done.

A representative of the Kansas Medical Society provided written-only proponent testimony. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the Department of Revenue indicates enactment of the bill would have no fiscal effect. The Kansas Department of Health and Environment indicates the agency would have expenditures of \$84,000 from the State General Fund for FY 2020 to compose rules and regulations. Any fiscal effect associated with the bill is not reflected in *The FY 2020 Governor's Budget Report*.