

## **BILL ANALYSIS**

C.S.H.B. 120  
By: Dawson  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

As of July 2004, there were more than 86,000 patients in the United States awaiting transplantation, of those 5,600 are Texans. Every 13 minutes, a new name is added to the national transplant waiting list, and every day, 17 people will die while awaiting a life saving organ transplant. Currently, Texas does not have a statewide organ and tissue donor registry. C.S.H.B. 120 establishes the Donor Education, Awareness and Registry (DEAR) Program of Texas which will develop educational and awareness activities to improve understanding and acceptance of organ and tissue donation and transplantation in Texas.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Organ, Tissue and Eye Donor Council in SECTION 8 of this bill.

### **ANALYSIS**

C.S.H.B. 120 amends the Transportation code to allow the statement of a gift to be shown on the donor's driver's license or personal identification card.

C.S.H.B. 120 amends the Health and Safety Code to require the Department of Public Safety (DPS) to provide the opportunity to the applicant for a drivers license or personal identification card to indicate if the person is willing to make an anatomical gift and the opportunity for the applicant to consent in writing that the Department provide the applicant's information to the organization selected by the public safety director for inclusion in the statewide Internet-based registry. The information included in the registry will be the person's name, date of birth, driver's license number, and the most recent address for the applicant. This may be done for the application of an original, renewal, corrected, or duplicate driver's license or personal identification certificate when the applicant applies in person, by mail, by internet, or through electronic means.

An affirmative statement on a person's driver's license or personal identification certificate after August 31, 2005 establishes that person as a donor.

The bill provides that a person's name and information may be deleted from the organ registry if the person provides written notice.

C.S.H.B. 120 amends the Transportation Code to create the Donor Education Awareness and Registry (DEAR) Program of Texas. The Texas Department of Public Safety, in consultation with the Department of State Health Services (DSHS), will enter in to an agreement with an organization chosen by the public safety director to establish and maintain a statewide internet-based registry of organ, tissue, and eye donors. The initial term of agreement, contingent on the availability of appropriations will be two years and is automatically reviewed for two-year terms thereafter unless terminated in written notice no later than the 180th day before the last day of the term. The department will electronically transfer the information of a person who consents to be included in the registry to the organization maintaining the registry. The organization maintaining the registry will make the information obtained from the department available to qualified organ, tissue, and eye bank organizations and maintain the registry to allow immediate access by these entities twenty-four hours a day, seven days a week through electronic and telephonic methods. The department will make educational material available that are developed

by the organization selected by the public safety director in each office that is authorized to issue driver licenses.

The department shall remit money collected under Sections 521.421(g), 521.422(c), and 502.1745 and appropriated to the department to the organization maintaining the registry, less any costs the department determines is necessary to pay the costs incurred by the Texas Organ, Tissue, and Eye Donor Council. The money must be spent by the managing organization to maintain operate and update the internet registry, and to design and distribute educational materials for prospective donors.

The managing organization of the registry is required to submit an annual written report through the public safety director that includes the number of donors listed in the registry, the changes in the number of donors listed in the registry, and the demographic characteristics of listed donors as can be determined by the provided information.

C.S.H.B. 120 amends the Transportation Code to stipulate that the collection of a \$1 optional fee for the issuance or renewal of a license and the issuance or renewal of a personal identification card, including duplicate, corrected and those issued over the Internet or by other electronic means will pay the costs for DEAR Program of Texas and the Texas Organ, Tissue, and Eye Donor Council.

In addition, C.S.H.B. 120 amends the Transportation Code to require county assessor-collectors to make educational DEAR Program of Texas materials (that are provided by DPS) available in offices that accept application for registration of motor vehicles. The county assessor-collector shall collect a \$1 additional fee on the registration or renewal of registration of a motor vehicle if the person opts to pay this fee. The fee will pay the costs of the DEAR Program of Texas and the Texas Organ, Tissue, and Eye Donor Council. The county assessor-collector is required to remit these fees to the comptroller.

C.S.H.B. 120 amends the Health and Safety Code to establish the Texas Organ, Tissue, and Eye Donor Council that is subject to the Texas Sunset Act. The Council is composed of a representative of DSHS appointed by the commissioner of DSHS, a representative of DPS as appointed by the public safety director, a representative of the Texas Department of Transportation as appointed by the director of that agency, three professional members appointed by the governor that include one representative who is a licensed transplant physician or nurse in Texas, one representative of an acute care hospitals in Texas, one representative who is employed in the field of organ donation education and two public members appointed by the Governor. Public members of the council must be a donor, recipient, or member of a donor's family and be selected from a pool of members recommended by nonprofit organizations in the field of transplantation and organ donor education that include the Texas Medical Association, the Texas Transplant Society, the Transplant Nurses' Association, the National Kidney Foundation, the National Minority Organ Tissue Transplant Education Program, and the American Society of Minority Health and Transplant Professionals. Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin. A member of the council who is a representative of a state agency is a nonvoting member of the Council.

A person is not eligible for appointment as a public member of the Council if the person or the person's spouse is employed by or participates in the management of an entity or organization that receives funds from the Council or the Department regarding a matter on which the Council advises the department, owns or controls, directly or indirectly, more than a ten percent interest in a business entity or other organization receiving funding from the Council or department regarding a matter on which the Council advises the department, or uses or receives a substantial amount of tangible goods, services, or funds from the council or department regarding a matter on which the Council advises the department other than compensation or reimbursement authorized by law for Council membership, attendance, or expenses. An officer, employee, paid consultant, or spouse of an officer, employee, paid consultant of a state trade association is prohibited from being a member or employee of the Council. A person may not be a member of the council or general counsel to the Council if the person is required to register as a lobbyist on behalf of a profession related to the operation of the Council.

C.S.H.B. 120 79(R)

Appointed Council members serve staggered six- year terms with terms of two or three members expiring February 1 of each odd-numbered year. A Council agency representative serves at the will of the agency. In the case of a vacancy, the appointing authority shall appoint a person to serve the remainder of the unexpired term. A appointed member may not serve more than one term consecutively.

The Governor will designate a public member of the Council as the presiding officer to serve at the will of the Governor.

A Council member may be removed due to lack of qualifications at the time of taking office or failure to maintain required qualifications during service, failure to discharge duties for a substantial part of the member's term, or an unexcused absence from more than half of the regularly scheduled meetings in a calendar year. If grounds for removal for a member exist, the presiding officer shall notify the governor and attorney general. If the grounds for removal involves the presiding officer, the director shall notify the next highest ranking officer to notify the governor and the attorney general.

The Council must meet at least twice each calendar year. Any action taken by the Council requires two-thirds of the members to be present and majority approval.

A member is prohibited from receiving compensation for service, but will be reimbursed for actual and necessary expenses for meals, lodging, transportation and incidental expenses incurred on Council business, subject to applicable limitations on reimbursement in the General Appropriations Act.

To serve on the Council a member must complete a training program prescribed by the bill and can be reimbursed for travel expenses incurred in attending the training program.

The Council, in consultation with DSHS and organ procurement organizations, shall advise the public safety director on needs for and efforts to increase organ donors, increase transplants performed, and decrease the number of patients waiting for organs. The Council, consultation with DSHS and organ procurement organizations, will establish and prioritize the initiatives of the DEAR Program of Texas, advise the public safety director of allocation of money for educational initiatives, on the creation of a donor education, awareness, and registry program specifically targeted at African American and Hispanic populations, faith-based initiatives to develop public awareness of organ donation, methods to disseminate information to recipients, donors and families, the development of an educational website, encourage research to evaluate the data and results of the DEAR Program of Texas, educate health care providers and attorneys regarding anatomical gifts and attorneys to provide organ donation information to clients seeking legal advice for end-of-life decisions and encourage medical and nursing schools in Texas to include mandatory organ donation education in the school's curriculums and encourage the requirement that a physician in neurology and neurosurgery residency program to complete an advanced course in organ donation education.

The Council must develop and implement policies that clearly separate the advisory responsibilities of the Council and the management responsibilities of the public safety director and the staff of the department.

The Council may set up advisory committees when necessary.

The council may receive grants and gifts from public or private sources to perform its duties under this chapter and deposit any funds accepted under this section to the credit of a special account in the general revenue fund. DSHS may retain five percent of a monetary gift to cover its costs in administering this section.

The Council must submit a report of the Council's activities to the Governor, Lieutenant Governor, Speaker of the House, and the members of the legislature before September 1 of each even-numbered year.

The financial transactions of the Council are subject to audit by the state auditor.

Repeals Chapter 49 of the Health and Safety Code that relates to the Anatomical Gift Educational Program.

### **EFFECTIVE DATE**

Upon passage, or, if the act does not receive the necessary vote, the Act takes effect September 1, 2005.

Section 7 of this act takes effect on September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The committee substitute makes changes to the original bill by deleting the reference to Living Bank International in SECTION 1, SECTION 2, and SECTION 4 of the committee substitute.

The committee substitute makes changes to the original bill by adding that the department shall consult with the Department of State Health Services and organ procurement organizations.

The substitute further differs from the original by specifying that the organization selected to maintain the registry must be an independent nonprofit organization solely engaged in organ donation and registration programs and established for at least seven years. The organization may not be engaged directly or indirectly in any aspect of organ, tissue, or eye procurement or placement.

The substitute differs from the original by changing the original contract with the maintaining organization from six years to two years, and changing the renewal terms from four years to two years.

The substitute differs from the original by allowing the department to collect the optional fee on duplicate or corrected licenses, licenses issued to reflect an additional authorization or a change in classification, or those issued over the internet or by other electronic means.

The substitute differs from the original by removing the executive commissioner of the Health and Human Services Commission or the executive commissioner's designee and amend to include a representative of the DSHS appointed by the commissioner of DSHS.

The substitute differs from the original by reducing the composition of the Council from eight to three professional members appointed by the governor. These professional members are to be composed of one licensed transplant physician or nurse, one representative of an acute care hospital, and one representative who is employed in the field of organ donation education. Reduces the composition of the Council to two public members that are appointed by the governor. The substitute removes the appointments that were to be made by the speaker of the house of representatives, and the lieutenant governor.

The substitute differs from the original by reducing from five members to two or three members who terms will expire on a staggered basis.

The substitute differs from the original by adding that the Council shall consult with the Department of State Health Services and organ procurement organizations.

The substitute differs from the original by adding that the Council must develop a program to educate health care providers and attorneys about anatomical gifts, and encourage attorneys to provide organ donation information to clients seeking end-of-life decisions. The Council must encourage medical schools and nursing schools to include mandatory organ donation education in the schools' curriculum and encourage medical schools to require a physician in a neurology or neurosurgery residency program to complete an advance course in organ donation education.

The substitute differs from the original by requiring DPS to contract with an organization for the establishment and maintenance of a donor registry not later than September 1, 2006. Also requires DPS to be in compliance with the changes in law made by this act regarding the optional

fees collected under Sections 521.421(g) and 521.422(c), Transportation Code, that is related to duplicate, corrected, or changed licenses or personal identification cards and related transactions conducted over the Internet or by other electronic means not later than June 1, 2006. The substitute removes language from the original bill for appoints made by the lieutenant governor, speaker of the house of representatives, the number of public appoints by the governor. The substitute differs from the original by providing that the optional fee on motor vehicle registration will take effect on September 1, 2007.