

HOUSE BILL NO. 968

INTRODUCED BY BROOKE

IN THE HOUSE

FEBRUARY 21, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 22, 1991 FIRST READING.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 25, 1991 PRINTING REPORT.

 ON MOTION, TAKEN FROM SECOND READING
AND REREFERRED TO THE COMMITTEE
ON APPROPRIATIONS.

MARCH 25, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 26, 1991 PRINTING REPORT.

MARCH 28, 1991 SECOND READING, DO PASS AS AMENDED.

 ENGROSSING REPORT.

 ON MOTION, RULES SUSPENDED. BILL
PLACED ON THIRD READING THIS DAY.

 THIRD READING, PASSED.
AYES, 77; NOES, 21.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 28, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE, & SAFETY.

 FIRST READING.

APRIL 9, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 11, 1991 SECOND READING, CONCURRED IN.

APRIL 12, 1991 THIRD READING, CONCURRED IN.
AYES, 32; NOES, 17.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 13, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 size and design, approved by the department, that signifies
2 that the possessor has executed a declaration, as provided
3 in 50-9-103, that has not been revoked or that the
4 possessor's attending physician has issued a do not
5 resuscitate order for the possessor and has documented the
6 grounds for the order in the possessor's medical file.

7 (5) "Do not resuscitate order" means a directive from a
8 licensed physician that emergency life-sustaining procedures
9 should not be administered to a particular person.

10 (6) "Do not resuscitate protocol" means a standardized
11 method of procedure, approved by the board and adopted in
12 the rules of the department, for the withholding of
13 emergency life-sustaining procedures by physicians and
14 emergency medical services personnel.

15 (7) "Emergency medical services personnel" has the
16 meaning provided in 50-9-102.

17 (8) "Health care facility" has the meaning provided in
18 50-5-101.

19 (9) "Life-sustaining procedure" means cardiopulmonary
20 resuscitation or a component of cardiopulmonary
21 resuscitation.

22 (10) "Physician" means a person licensed under Title 37,
23 chapter 3, to practice medicine in this state.

24 (11) "Terminal condition" has the meaning provided in
25 50-9-102.

1 NEW SECTION. Section 2. Immunities. (1) The following
2 are not subject to civil or criminal liability and are not
3 guilty of unprofessional conduct upon discovery of DNR
4 identification upon a person in a terminal condition:

5 (a) a physician who causes the withholding or
6 withdrawal of life-sustaining procedure from that person;

7 (b) a person who participates in the withholding or
8 withdrawal of life-sustaining procedures under the direction
9 or with the authorization of a physician;

10 (c) emergency medical services personnel who cause or
11 participate in the withholding or withdrawal of
12 life-sustaining procedures from that person;

13 (d) a health care facility in which withholding or
14 withdrawal of life-sustaining procedures from that person
15 occurs;

16 (e) physicians, persons under the direction or
17 authorization of a physician, emergency medical services
18 personnel, or health care facilities listed in subsections
19 (1)(a) through (1)(d) that provide life-sustaining
20 procedures pursuant to an oral or written request
21 communicated to them by a person with a terminal condition
22 who possesses DNR identification.

23 (2) The provisions of subsections (1)(a) through (1)(d)
24 apply when a life-sustaining procedure is withheld or
25 withdrawn in accordance with the do not resuscitate

1 protocol.

2 (3) Emergency medical services personnel who follow a
3 do not resuscitate order are not subject to civil or
4 criminal liability and are not guilty of unprofessional
5 conduct.

6 NEW SECTION. Section 3. Adherence to do not
7 resuscitate protocol -- transfer of patients. (1) Emergency
8 medical services personnel other than physicians shall
9 comply with the do not resuscitate protocol when presented
10 with either do not resuscitate identification, an oral do
11 not resuscitate order issued directly by a physician, or a
12 written do not resuscitate order entered on a form
13 prescribed by the department.

14 (2) An attending physician or a health care facility
15 unwilling or unable to comply with the do not resuscitate
16 protocol shall take all reasonable steps to transfer a
17 person with a terminal condition possessing DNR
18 identification to another physician or to a health care
19 facility in which the do not resuscitate protocol will be
20 followed.

21 NEW SECTION. Section 4. Effect on insurance --
22 patient's decision. (1) Death resulting from the withholding
23 or withdrawal of emergency life-sustaining procedures
24 pursuant to the do. not resuscitate protocol and in
25 accordance with [sections 1 through 6] is not, for any

1 purpose, a suicide or homicide.

2 (2) The possession of DNR identification pursuant to
3 [sections 1 through 6] does not affect in any manner the
4 sale, procurement, or issuance of any policy of life
5 insurance, nor does it modify the terms of an existing
6 policy of life insurance. A policy of life insurance is not
7 legally impaired or invalidated in any manner by the
8 withholding or withdrawal of emergency life-sustaining
9 procedures from an insured person possessing DNR
10 identification, notwithstanding any term of the policy to
11 the contrary.

12 (3) A physician, health care facility, or other health
13 care provider and a health care service plan, insurer
14 issuing disability insurance, self-insured employee welfare
15 benefit plan, or nonprofit hospital plan may not require a
16 person to possess DNR identification as a condition for
17 being insured for or receiving health care services.

18 (4) [Sections 1 through 6] do not create a presumption
19 concerning the intention of an individual who does not
20 possess DNR identification with respect to the use,
21 withholding, or withdrawal of emergency life-sustaining
22 procedures.

23 (5) [Sections 1 though 6] do not increase or decrease
24 the right of a patient to make decisions regarding the use
25 of emergency life-sustaining procedures if the patient is

1 able to do so, nor do [sections 1 through 6] impair or
 2 supersede any right or responsibility that a person has to
 3 effect the withholding or withdrawal of medical care in any
 4 lawful manner. In that respect, the provisions of [sections
 5 1 through 6] are cumulative.

6 (6) [Sections 1 through 6] do not authorize or approve
 7 mercy killing.

8 **NEW SECTION. Section 5.** Rulemaking authority. (1) Upon
 9 the adoption of a do not resuscitate protocol by the board,
 10 the department may adopt a standard form of DNR
 11 identification to be used statewide.

12 (2) The department shall adopt rules to administer the
 13 provisions of [sections 1 through 6].

14 **NEW SECTION. Section 6.** Penalties. (1) A physician who
 15 willfully fails to transfer a patient in accordance with
 16 [section 3] is guilty of a misdemeanor punishable by a fine
 17 not to exceed \$500 or imprisonment in the county jail for a
 18 term not to exceed 1 year, or both.

19 (2) A person who purposely conceals, cancels, defaces,
 20 or obliterates the DNR identification of another without the
 21 consent of the possessor or who falsifies or forges a
 22 revocation of the DNR identification of another is guilty of
 23 a misdemeanor punishable by a fine not to exceed \$500 or
 24 imprisonment in the county jail for a term not to exceed 1
 25 year, or both.

1 (3) A person who falsifies or forges the DNR
 2 identification of another or purposely conceals or withholds
 3 personal knowledge of a revocation of DNR identification
 4 with the intent to cause the use, withholding, or withdrawal
 5 of life-sustaining procedures is guilty of a misdemeanor
 6 punishable by a fine not to exceed \$500 or imprisonment in
 7 the county jail for a term not to exceed 1 year, or both.

8 **NEW SECTION. Section 7.** Effective date. [This act] is
 9 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0968, second reading copy.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill authorizing the Department of Health and Environmental Sciences to adopt a standard means of identification for persons for whom a medical order not to perform cardiopulmonary resuscitation exists in order to prevent the application of life-sustaining procedures; providing for civil and criminal immunity for health care professionals withholding life-sustaining procedures pursuant to a "do not resuscitate" order or to persons possessing the identification; requiring the transfer to another caregiver under certain circumstances of patients possessing the standard identification; requiring emergency medical personnel other than physicians to comply with "do not resuscitate" orders; providing for the effect on insurance policies; and requiring the department to adopt rules and providing penalties.

ASSUMPTIONS:

1. The department will prepare and adopt rules and implement other provisions of the proposed bill within the \$1,000 appropriation provided.

FISCAL IMPACT:

No additional.



ROD. SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



VIVIAN M. BROOKE, PRIMARY SPONSOR DATE

Fiscal Note for HB0968, second reading copy. **HB 968**

1 HOUSE BILL NO. 968
 2 INTRODUCED BY BROOKE
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
 5 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT A
 6 STANDARD MEANS OF IDENTIFICATION FOR PERSONS FOR WHOM A
 7 MEDICAL ORDER NOT TO PERFORM CARDIOPULMONARY RESUSCITATION
 8 EXISTS IN ORDER TO PREVENT THE APPLICATION OF
 9 LIFE-SUSTAINING PROCEDURES; PROVIDING FOR CIVIL AND CRIMINAL
 10 IMMUNITY FOR HEALTH CARE PROFESSIONALS WITHHOLDING
 11 LIFE-SUSTAINING PROCEDURES PURSUANT TO A DO NOT RESUSCITATE
 12 ORDER OR TO PERSONS POSSESSING THE IDENTIFICATION;
 13 REQUIRING THE TRANSFER TO ANOTHER CAREGIVER UNDER CERTAIN
 14 CIRCUMSTANCES OF PATIENTS POSSESSING THE STANDARD
 15 IDENTIFICATION; REQUIRING EMERGENCY MEDICAL PERSONNEL OTHER
 16 THAN PHYSICIANS TO COMPLY WITH DO NOT RESUSCITATE ORDERS;
 17 PROVIDING FOR THE EFFECT ON INSURANCE POLICIES; REQUIRING
 18 THE DEPARTMENT TO ADOPT RULES; PROVIDING PENALTIES;
 19 PROVIDING FOR AN APPROPRIATION; AND PROVIDING AN IMMEDIATE
 20 EFFECTIVE DATE."

21
22 STATEMENT OF INTENT

23 A statement of intent is required for this bill because
24 [section 5] grants the department of health and
25 environmental sciences authority to adopt rules implementing

1 the bill. It is intended that the rules adopt by reference
 2 the board of medical examiners' do not resuscitate protocol
 3 and address, among other things, a standard form of
 4 statewide do not resuscitate identification, a form for a do
 5 not resuscitate order, training for emergency medical
 6 services personnel to inform them of the provisions of the
 7 bill and its implementing rules, and standards that
 8 emergency medical personnel shall follow when presented with
 9 do not resuscitate identification. It is also the intent of
 10 the legislature that the do not resuscitate identification
 11 adopted pursuant to this bill may be identical to that
 12 adopted pursuant to Title 50, chapter 9, and that the rules
 13 adopted pursuant to this bill may be correlated and
 14 intermingled with the rules adopted pursuant to 50-9-110.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. **Section 1.** Definitions. As used in
18 [sections 1 through 6], unless the context clearly requires
19 otherwise, the following definitions apply:

- 20 (1) "Attending physician" has the meaning provided in
- 21 50-9-102.
- 22 (2) "Board" means the state board of medical examiners.
- 23 (3) "Department" means the department of health and
- 24 environmental sciences.
- 25 (4) "DNR identification" means a standardized

1 identification card, form, necklace, TATTOO, or bracelet of
 2 uniform size and design, approved by the department, that
 3 signifies that the possessor has executed a declaration, as
 4 provided in 50-9-103, that has not been revoked or that the
 5 possessor's attending physician has issued a do not
 6 resuscitate order for the possessor and has documented the
 7 grounds for the order in the possessor's medical file.

8 (5) "Do not resuscitate order" means a directive from a
 9 licensed physician that emergency life-sustaining procedures
 10 should not be administered to a particular person.

11 (6) "Do not resuscitate protocol" means a standardized
 12 method of procedure, approved by the board and adopted in
 13 the rules of the department, for the withholding of
 14 emergency life-sustaining procedures by physicians and
 15 emergency medical services personnel.

16 (7) "Emergency medical services personnel" has the
 17 meaning provided in 50-9-102.

18 (8) "Health care facility" has the meaning provided in
 19 50-5-101.

20 (9) "Life-sustaining procedure" means cardiopulmonary
 21 resuscitation or a component of cardiopulmonary
 22 resuscitation.

23 (10) "Physician" means a person licensed under Title 37,
 24 chapter 3, to practice medicine in this state.

25 (11) "Terminal condition" has the meaning provided in

1 50-9-102.

2 NEW SECTION. Section 2. Immunities. (1) The following
 3 are not subject to civil or criminal liability and are not
 4 guilty of unprofessional conduct upon discovery of DNR
 5 identification upon a person in a terminal condition:

6 (a) a physician who causes the withholding or
 7 withdrawal of life-sustaining procedure from that person;

8 (b) a person who participates in the withholding or
 9 withdrawal of life-sustaining procedures under the direction
 10 or with the authorization of a physician;

11 (c) emergency medical services personnel who cause or
 12 participate in the withholding or withdrawal of
 13 life-sustaining procedures from that person;

14 (d) a health care facility in which withholding or
 15 withdrawal of life-sustaining procedures from that person
 16 occurs;

17 (e) physicians, persons under the direction or
 18 authorization of a physician, emergency medical services
 19 personnel, or health care facilities listed in subsections
 20 (1)(a) through (1)(d) that provide life-sustaining
 21 procedures pursuant to an oral or written request
 22 communicated to them by a person with a terminal condition
 23 who possesses DNR identification.

24 (2) The provisions of subsections (1)(a) through (1)(d)
 25 apply when a life-sustaining procedure is withheld or

1 withdrawn in accordance with the do not resuscitate
2 protocol.

3 (3) Emergency medical services personnel who follow a
4 do not resuscitate order are not subject to civil or
5 criminal liability and are not guilty of unprofessional
6 conduct.

7 NEW SECTION. **Section 3. Adherence to do not**
8 **resuscitate protocol -- transfer of patients.** (1) Emergency
9 medical services personnel other than physicians shall
10 comply with the do not resuscitate protocol when presented
11 with either do not resuscitate identification, an oral do
12 not resuscitate order issued directly by a physician, or a
13 written do not resuscitate order entered on a form
14 prescribed by the department.

15 (2) An attending physician or a health care facility
16 unwilling or unable to comply with the do not resuscitate
17 protocol shall take all reasonable steps to transfer a
18 person with a terminal condition possessing DNR
19 identification to another physician or to a health care
20 facility in which the do not resuscitate protocol will be
21 followed.

22 NEW SECTION. **Section 4. Effect on insurance --**
23 **patient's decision.** (1) Death resulting from the withholding
24 or withdrawal of emergency life-sustaining procedures
25 pursuant to the do not resuscitate protocol and in

1 accordance with [sections 1 through 6] is not, for any
2 purpose, a suicide or homicide.

3 (2) The possession of DNR identification pursuant to
4 [sections 1 through 6] does not affect in any manner the
5 sale, procurement, or issuance of any policy of life
6 insurance, nor does it modify the terms of an existing
7 policy of life insurance. A policy of life insurance is not
8 legally impaired or invalidated in any manner by the
9 withholding or withdrawal of emergency life-sustaining
10 procedures from an insured person possessing DNR
11 identification, notwithstanding any term of the policy to
12 the contrary.

13 (3) A physician, health care facility, or other health
14 care provider and a health care service plan, insurer
15 issuing disability insurance, self-insured employee welfare
16 benefit plan, or nonprofit hospital plan may not require a
17 person to possess DNR identification as a condition for
18 being insured for or receiving health care services.

19 (4) [Sections 1 through 6] do not create a presumption
20 concerning the intention of an individual who does not
21 possess DNR identification with respect to the use,
22 withholding, or withdrawal of emergency life-sustaining
23 procedures.

24 (5) [Sections 1 though 6] do not increase or decrease
25 the right of a patient to make decisions regarding the use

1 of emergency life-sustaining procedures if the patient is
 2 able to do so, nor do [sections 1 through 6] impair or
 3 supersede any right or responsibility that a person has to
 4 effect the withholding or withdrawal of medical care in any
 5 lawful manner. In that respect, the provisions of [sections
 6 1 through 6] are cumulative.

7 (6) [Sections 1 through 6] do not authorize or approve
 8 mercy killing.

9 NEW SECTION. Section 5. Rulemaking authority. (1) Upon
 10 the adoption of a do not resuscitate protocol by the board,
 11 the department may adopt a standard form of DNR
 12 identification to be used statewide.

13 (2) The department shall adopt rules to administer the
 14 provisions of [sections 1 through 6].

15 NEW SECTION. Section 6. Penalties. (1) A physician who
 16 willfully fails to transfer a patient in accordance with
 17 [section 3] is guilty of a misdemeanor punishable by a fine
 18 not to exceed \$500 or imprisonment in the county jail for a
 19 term not to exceed 1 year, or both.

20 (2) A person who purposely conceals, cancels, defaces,
 21 or obliterates the DNR identification of another without the
 22 consent of the possessor or who falsifies or forges a
 23 revocation of the DNR identification of another is guilty of
 24 a misdemeanor punishable by a fine not to exceed \$500 or
 25 imprisonment in the county jail for a term not to exceed 1

1 year, or both.

2 (3) A person who falsifies or forges the DNR
 3 identification of another or purposely conceals or withholds
 4 personal knowledge of a revocation of DNR identification
 5 with the intent to cause the use, withholding, or withdrawal
 6 of life-sustaining procedures is guilty of a misdemeanor
 7 punishable by a fine not to exceed \$500 or imprisonment in
 8 the county jail for a term not to exceed 1 year, or both.

9 NEW SECTION. SECTION 7. APPROPRIATION. THERE IS
 10 APPROPRIATED TO THE DEPARTMENT OF HEALTH THE SUM OF \$1,000
 11 FOR THE 2 FISCAL YEARS BEGINNING JULY 1, 1991, TO BE USED TO
 12 PUBLISH AND DISSEMINATE EDUCATIONAL MATERIALS RELATING TO
 13 [THIS ACT] FOR PHYSICIANS, HEALTH CARE FACILITIES, EMERGENCY
 14 MEDICAL SERVICES PERSONNEL, AND OTHERS.

15 NEW SECTION. Section 8. Effective date. [This act] is
 16 effective on passage and approval.

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON APPROPRIATIONS
AS AMENDED

HOUSE BILL NO. 968
INTRODUCED BY BROOKE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT A STANDARD MEANS OF IDENTIFICATION FOR PERSONS FOR WHOM A MEDICAL ORDER NOT TO PERFORM CARDIOPULMONARY RESUSCITATION EXISTS IN ORDER TO PREVENT THE APPLICATION OF LIFE-SUSTAINING PROCEDURES; PROVIDING FOR CIVIL AND CRIMINAL IMMUNITY FOR HEALTH CARE PROFESSIONALS WITHHOLDING LIFE-SUSTAINING PROCEDURES PURSUANT TO A DO NOT RESUSCITATE ORDER OR TO PERSONS POSSESSING THE IDENTIFICATION; REQUIRING THE TRANSFER TO ANOTHER CAREGIVER UNDER CERTAIN CIRCUMSTANCES OF PATIENTS POSSESSING THE STANDARD IDENTIFICATION; REQUIRING EMERGENCY MEDICAL PERSONNEL OTHER THAN PHYSICIANS TO COMPLY WITH DO NOT RESUSCITATE ORDERS; PROVIDING FOR THE EFFECT ON INSURANCE POLICIES; REQUIRING THE DEPARTMENT TO ADOPT RULES; PROVIDING PENALTIES; ~~PROVIDING--FOR--AN--APPROPRIATION;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants the department of health and environmental sciences authority to adopt rules implementing

the bill. It is intended that the rules adopt by reference the board of medical examiners' do not resuscitate protocol and address, among other things, a standard form of statewide do not resuscitate identification, a form for a do not resuscitate order, training for emergency medical services personnel to inform them of the provisions of the bill and its implementing rules, and standards that emergency medical personnel shall follow when presented with do not resuscitate identification. It is also the intent of the legislature that the do not resuscitate identification adopted pursuant to this bill may be identical to that adopted pursuant to Title 50, chapter 9, and that the rules adopted pursuant to this bill may be correlated and intermingled with the rules adopted pursuant to 50-9-110.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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1 identification card, form, necklace, TATTOO, or bracelet of
 2 uniform size and design, approved by the department, that
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 6 resuscitate order for the possessor and has documented the
 7 grounds for the order in the possessor's medical file.

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 9 licensed physician that emergency life-sustaining procedures
 10 should not be administered to a particular person.

11 (6) "Do not resuscitate protocol" means a standardized
 12 method of procedure, approved by the board and adopted in
 13 the rules of the department, for the withholding of
 14 emergency life-sustaining procedures by physicians and
 15 emergency medical services personnel.

16 (7) "Emergency medical services personnel" has the
 17 meaning provided in 50-9-102.

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 19 50-5-101.

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 21 resuscitation or a component of cardiopulmonary
 22 resuscitation.

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 24 chapter 3, to practice medicine in this state.

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 3 are not subject to civil or criminal liability and are not
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 7 withdrawal of life-sustaining procedure from that person;

8 (b) a person who participates in the withholding or
 9 withdrawal of life-sustaining procedures under the direction
 10 or with the authorization of a physician;

11 (c) emergency medical services personnel who cause or
 12 participate in the withholding or withdrawal of
 13 life-sustaining procedures from that person;

14 (d) a health care facility in which withholding or
 15 withdrawal of life-sustaining procedures from that person
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17 (e) physicians, persons under the direction or
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 19 personnel, or health care facilities listed in subsections
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4 [sections 1 through 6] does not affect in any manner the
5 sale, procurement, or issuance of any policy of life
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17 person to possess DNR identification as a condition for
18 being insured for or receiving health care services.

19 (4) [Sections 1 through 6] do not create a presumption
20 concerning the intention of an individual who does not
21 possess DNR identification with respect to the use,
22 withholding, or withdrawal of emergency life-sustaining
23 procedures.

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25 the right of a patient to make decisions regarding the use

1 of emergency life-sustaining procedures if the patient is
2 able to do so, nor do [sections 1 through 6] impair or
3 supersede any right or responsibility that a person has to
4 effect the withholding or withdrawal of medical care in any
5 lawful manner. In that respect, the provisions of [sections
6 1 through 6] are cumulative.

7 (6) [Sections 1 through 6] do not authorize or approve
8 mercy killing.

9 NEW SECTION. Section 5. Rulemaking authority. (1) Upon
10 the adoption of a do not resuscitate protocol by the board,
11 the department may adopt a standard form of DNR
12 identification to be used statewide.

13 (2) The department shall adopt rules to administer the
14 provisions of [sections 1 through 6].

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18 not to exceed \$500 or imprisonment in the county jail for a
19 term not to exceed 1 year, or both.

20 (2) A person who purposely conceals, cancels, defaces,
21 or obliterates the DNR identification of another without the
22 consent of the possessor or who falsifies or forges a
23 revocation of the DNR identification of another is guilty of
24 a misdemeanor punishable by a fine not to exceed \$500 or
25 imprisonment in the county jail for a term not to exceed 1

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3 identification of another or purposely conceals or withholds
4 personal knowledge of a revocation of DNR identification
5 with the intent to cause the use, withholding, or withdrawal
6 of life-sustaining procedures is guilty of a misdemeanor
7 punishable by a fine not to exceed \$500 or imprisonment in
8 the county jail for a term not to exceed 1 year, or both.

9 ~~NEW SECTION. SECTION 7. APPROPRIATION. THERE IS~~
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11 ~~FOR THE 2 FISCAL YEARS BEGINNING JULY 1, 1991, TO BE USED TO~~
12 ~~PUBLISH AND DISSEMINATE EDUCATIONAL MATERIALS RELATING TO~~
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16 effective on passage and approval.

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HOUSE BILL NO. 968
INTRODUCED BY BROOKE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT A STANDARD MEANS OF IDENTIFICATION FOR PERSONS FOR WHOM A MEDICAL ORDER NOT TO PERFORM CARDIOPULMONARY RESUSCITATION EXISTS IN ORDER TO PREVENT THE APPLICATION OF LIFE-SUSTAINING PROCEDURES; PROVIDING FOR CIVIL AND CRIMINAL IMMUNITY FOR HEALTH CARE PROFESSIONALS WITHHOLDING LIFE-SUSTAINING PROCEDURES PURSUANT TO A DO NOT RESUSCITATE ORDER OR TO PERSONS POSSESSING THE IDENTIFICATION; REQUIRING THE TRANSFER TO ANOTHER CAREGIVER UNDER CERTAIN CIRCUMSTANCES OF PATIENTS POSSESSING THE STANDARD IDENTIFICATION; REQUIRING EMERGENCY MEDICAL PERSONNEL OTHER THAN PHYSICIANS TO COMPLY WITH DO NOT RESUSCITATE ORDERS; PROVIDING FOR THE EFFECT ON INSURANCE POLICIES; REQUIRING THE DEPARTMENT TO ADOPT RULES; PROVIDING PENALTIES; ~~PROVIDING--FOR--AN--APPROPRIATION;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] grants the department of health and environmental sciences authority to adopt rules implementing

the bill. It is intended that the rules adopt by reference the board of medical examiners' do not resuscitate protocol and address, among other things, a standard form of statewide do not resuscitate identification, a form for a do not resuscitate order, training for emergency medical services personnel to inform them of the provisions of the bill and its implementing rules, and standards that emergency medical personnel shall follow when presented with do not resuscitate identification. It is also the intent of the legislature that the do not resuscitate identification adopted pursuant to this bill may be identical to that adopted pursuant to Title 50, chapter 9, and that the rules adopted pursuant to this bill may be correlated and intermingled with the rules adopted pursuant to 50-9-110.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in

[sections 1 through 6], unless the context clearly requires otherwise, the following definitions apply:

- (1) "Attending physician" has the meaning provided in 50-9-102.
- (2) "Board" means the state board of medical examiners.
- (3) "Department" means the department of health and environmental sciences.
- (4) "DNR identification" means a standardized



1 identification card, form, necklace, ~~PATF007~~ or bracelet of
 2 uniform size and design, approved by the department, that
 3 signifies that the possessor has executed a declaration, as
 4 provided in 50-9-103, that has not been revoked or that the
 5 possessor's attending physician has issued a do not
 6 resuscitate order for the possessor and has documented the
 7 grounds for the order in the possessor's medical file.

8 (5) "Do not resuscitate order" means a directive from a
 9 licensed physician that emergency life-sustaining procedures
 10 should not be administered to a particular person.

11 (6) "Do not resuscitate protocol" means a standardized
 12 method of procedure, approved by the board and adopted in
 13 the rules of the department, for the withholding of
 14 emergency life-sustaining procedures by physicians and
 15 emergency medical services personnel.

16 (7) "Emergency medical services personnel" has the
 17 meaning provided in 50-9-102.

18 (8) "Health care facility" has the meaning provided in
 19 50-5-101.

20 (9) "Life-sustaining procedure" means cardiopulmonary
 21 resuscitation or a component of cardiopulmonary
 22 resuscitation.

23 (10) "Physician" means a person licensed under Title 37,
 24 chapter 3, to practice medicine in this state.

25 ~~{11} "Terminal condition" has the meaning provided in~~

1 ~~50-9-102~~

2 NEW SECTION. Section 2. Immunities. (1) The following
 3 are not subject to civil or criminal liability and are not
 4 guilty of unprofessional conduct upon discovery of DNR
 5 identification upon a person ~~in-a-terminal-condition~~:

6 (a) a physician who causes the withholding or
 7 withdrawal of life-sustaining procedure from that person;

8 (b) a person who participates in the withholding or
 9 withdrawal of life-sustaining procedures under the direction
 10 or with the authorization of a physician;

11 (c) emergency medical services personnel who cause or
 12 participate in the withholding or withdrawal of
 13 life-sustaining procedures from that person;

14 (d) a health care facility in which withholding or
 15 withdrawal of life-sustaining procedures from that person
 16 occurs;

17 (e) physicians, persons under the direction or
 18 authorization of a physician, emergency medical services
 19 personnel, or health care facilities ~~listed-in-subsections~~
 20 ~~{1}(a)---through---{1}(d)~~ that provide life-sustaining
 21 procedures pursuant to an oral or written request
 22 communicated to them by a person ~~with-a-terminal-condition~~
 23 who possesses DNR identification.

24 (2) The provisions of subsections (1)(a) through (1)(d)
 25 apply when a life-sustaining procedure is withheld or

1 withdrawn in accordance with the do not resuscitate
2 protocol.

3 (3) Emergency medical services personnel who follow a
4 do not resuscitate order FROM A LICENSED PHYSICIAN are not
5 subject to civil or criminal liability and are not guilty of
6 unprofessional conduct.

7 NEW SECTION. Section 3. Adherence to do not
8 resuscitate protocol -- transfer of patients. (1) Emergency
9 medical services personnel other than physicians shall
10 comply with the do not resuscitate protocol when presented
11 with either do not resuscitate identification, an oral do
12 not resuscitate order issued directly by a physician, or a
13 written do not resuscitate order entered on a form
14 prescribed by the department.

15 (2) An attending physician or a health care facility
16 unwilling or unable to comply with the do not resuscitate
17 protocol shall take all reasonable steps to transfer a
18 person with---a---terminal---condition possessing DNR
19 identification to another physician or to a health care
20 facility in which the do not resuscitate protocol will be
21 followed.

22 NEW SECTION. Section 4. Effect on insurance --
23 patient's decision. (1) Death resulting from the withholding
24 or withdrawal of emergency life-sustaining procedures
25 pursuant to the do not resuscitate protocol and in

1 accordance with [sections 1 through 6] is not, for any
2 purpose, a suicide or homicide.

3 (2) The possession of DNR identification pursuant to
4 [sections 1 through 6] does not affect in any manner the
5 sale, procurement, or issuance of any policy of life
6 insurance, nor does it modify the terms of an existing
7 policy of life insurance. A policy of life insurance is not
8 legally impaired or invalidated in any manner by the
9 withholding or withdrawal of emergency life-sustaining
10 procedures from an insured person possessing DNR
11 identification, notwithstanding any term of the policy to
12 the contrary.

13 (3) A physician, health care facility, or other health
14 care provider and a health care service plan, insurer
15 issuing disability insurance, self-insured employee welfare
16 benefit plan, or nonprofit hospital plan may not require a
17 person to possess DNR identification as a condition for
18 being insured for or receiving health care services.

19 (4) [Sections 1 through 6] do not create a presumption
20 concerning the intention of an individual who does not
21 possess DNR identification with respect to the use,
22 withholding, or withdrawal of emergency life-sustaining
23 procedures.

24 (5) [Sections 1 though 6] do not increase or decrease
25 the right of a patient to make decisions regarding the use

1 of emergency life-sustaining procedures if the patient is
2 able to do so, nor do [sections 1 through 6] impair or
3 supersede any right or responsibility that a person has to
4 effect the withholding or withdrawal of medical care in any
5 lawful manner. In that respect, the provisions of [sections
6 1 through 6] are cumulative.

7 (6) [Sections 1 through 6] do not authorize or approve
8 mercy killing.

9 NEW SECTION. Section 5. Rulemaking authority. (1) Upon
10 the adoption of a do not resuscitate protocol by the board,
11 the department may adopt a standard form of DNR
12 identification to be used statewide.

13 (2) The department shall adopt rules to administer the
14 provisions of [sections 1 through 6].

15 NEW SECTION. Section 6. Penalties. (1) A physician who
16 willfully fails to transfer a patient in accordance with
17 [section 3] is guilty of a misdemeanor punishable by a fine
18 not to exceed \$500 or imprisonment in the county jail for a
19 term not to exceed 1 year, or both.

20 (2) A person who purposely conceals, cancels, defaces,
21 or obliterates the DNR identification of another without the
22 consent of the possessor or who falsifies or forges a
23 revocation of the DNR identification of another is guilty of
24 a misdemeanor punishable by a fine not to exceed \$500 or
25 imprisonment in the county jail for a term not to exceed 1

1 year, or both.

2 (3) A person who falsifies or forges the DNR
3 identification of another or purposely conceals or withholds
4 personal knowledge of a revocation of DNR identification
5 with the intent to cause the use, withholding, or withdrawal
6 of life-sustaining procedures is guilty of a misdemeanor
7 punishable by a fine not to exceed \$500 or imprisonment in
8 the county jail for a term not to exceed 1 year, or both.

9 NEW SECTION. SECTION 7. APPROPRIATION. THERE IS
10 APPROPRIATED TO THE DEPARTMENT OF HEALTH THE SUM OF \$17,000
11 FOR THE 2 FISCAL YEARS BEGINNING JULY 1, 1991, TO BE USED TO
12 PUBLISH AND DISSEMINATE EDUCATIONAL MATERIALS RELATING TO
13 {THIS ACT} FOR PHYSICIANS, HEALTH CARE FACILITIES, EMERGENCY
14 MEDICAL SERVICES PERSONNEL, AND OTHERS.

15 NEW SECTION. Section 7. Effective date. [This act] is
16 effective on passage and approval.

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