

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 204

Call to Order: By Senator J. D. Lynch, on March 28, 1989,
at 8:40 p.m., Room 312-2, State Capitol

ROLL CALL

Members Present: Senators J. D. Lynch, Bill Norman, John Harp; Representatives Jessica Stickney, Dave Brown, Ralph Eudaily

Members Excused: None

Members Absent: None

Staff Present: Dorothy Quinn, Secretary

Announcements/Discussion: None

DISPOSITION OF SENATE BILL 204

Discussion: Representative Brown asked that if House Amendment #3 is stricken, does that still allow the hospital on its entry form to ask the patient if he/she wishes to be an organ donor. Senator Lynch answered in the affirmative, and added that it does not allow the hospital to pursue it further if the answer is negative. Rep. Brown stated the House committee was very strong that the hospital should at least be able to ask. Senator Lynch stated the intent of the Senate was that only the first question would be asked. If the person answered negatively, they would not pursue the matter further. Rep. Brown stated that is also the intent of the House. The committee reviewed the bill to be sure the above-mentioned intent was still intact.

Jim Ahrens, Montana Hospital Association, stated that one of the concerns is that the system seems to be working now, and hospitals are concerned about routine inquiry. By striking that language it does not preclude the request. Rep. Brown asked Mr. Ahrens if some attorney might interpret this to mean that the question cannot be asked. Mr. Ahrens did not believe that would happen.

Senator Lynch added that he had several call from institutions advising they do not go beyond asking the

initial question.

Senator Norman reiterated that the intent is to make it possible for each hospital to ask each patient, upon arrival, if he is an organ donor.

Representative Brown pointed out there is also a section of the bill, Page 19, which responds to the question of a patient being unconscious or not able to answer for himself, or in a situation where dealing with him might cause him a problem emotionally, so the hospital can go to the family and ask the question.

Representative Eudaily raised the question of what is to change practice if it isn't in statute. Mr. Ahrens responded by stating that if death appears near, a person is asked if they are an organ donor. What this amendment does is require that when a patient enters the hospital, the patient would be asked at that time if he/she is an organ donor. The fear of hospitals is that the system is working now and if you ask the question too soon, it could send out different feelings. He suggested that since routine inquiry is so new it might be better to put "may" in the language instead of "shall" and let it work until the next session.

Representative Eudaily then asked if the hospitals operate on routine inquiry at the present time. Mr. Ahrens stated that no, they do not. They do it only at about the time a person may be near death. Some hospitals currently ask on the form as the patient enters.

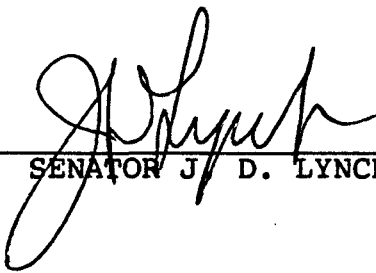
Representative Brown pointed out that since this is a Conference Committee they must either accept or reject amendments in whole. He stated he is comfortable with leaving it for two years under the present system, especially if the present practice has only been going for a year or so. Senator Lynch further pointed out that people involved in it, ie the Eye Bank, Regional Hospital at Kalispell, recommended the current practice to continue.

Senator Lynch referred to the first amendment, page 11, line 11, and asked why the House struck "Nurse". After some discussion it was decided that amendment #1 be receded.

Amendments and Votes: Representative Brown made a motion that the House recede from Amendments 1 and 3, and that the Senate accede to Amendment 2. Those in favor, 6; opposed, 0. MOTION PASSED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 9:15 p.m.



SENATOR J. D. LYNCH, Chairman

JDL/dq

concomdq.328

Conference Committee Report
on SB 204
Report No. 1, March 28, 1989

Mr President and Mr. Speaker:

We, your Conference Committee on SB 204 met and considered:

The House Committee on Judiciary amendments to Sb 204 (third reading copy -- blue) dated March 1, 1989.

We recommend that:

1. House amendments Nos. 1 and 3 be rejected.
2. House amendment No. 2 be accepted.


And that SB 204 (reference copy -- salmon) be amended as follows:

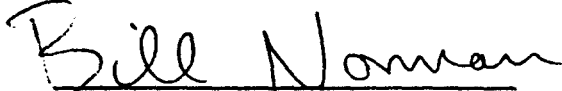
1. Page 11, line 11.
Following: "~~NURSE,~~"
Insert: "nurse,"


2. Page 18, line 10 through page 19, line 3.
Strike: subsection (1) in its entirety
Renumber: subsequent subsections

And that this Conference Committee Report be adopted.

FOR THE SENATE


Sen. Lynch, Chairman



Sen. Norman


Sen. Harp

FOR THE HOUSE


Rep. Stickney


Rep. Dave Brown


Rep. Eudaily

ADOPT

REJECT

11.C.
3/28/89
2: p.m.

ccsb204.328


CORRECTED STANDING COMMITTEE REPORT

SB 204
3/28/89

March 1, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 204 (blue reference copy) be concurred in as amended.

Signed: 

Dave Brown, Chairman

[REP. STICKNEY WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 11, line 11.

Strike: "NURSE,"

2. Page 12, line 19.

Strike: "(C)"

3. Page 18, line 10.

Following: line 9

Insert: "(1) On or before admission to a hospital, or as soon as possible thereafter, a person designated by the hospital shall ask each patient who is at least 18 years of age: "Are you an organ or tissue donor?" The designated person shall then make available to a person who answers in the negative basic information regarding the option to make or refuse to make an anatomical gift. The question must be asked, and the basic information must be made available, with reasonable discretion and sensitivity to the circumstances of the patient and is not required if a gift is not suitable, based upon accepted medical standards, for a purpose specified in 72-17-202 or if there are medical or emotional conditions under which the question or the information would contribute to severe emotional distress. If the answer is affirmative the person shall request a copy of the document of gift. The answer to the question, an available copy of any document of gift or refusal to make an anatomical gift, and any other relevant information, must be placed in the patient's medical record."

Renumber: subsequent subsections

HOUSE

481510SC.HBV

SB 204

EXECUTIVE ACTION ON SB 182

Chairman Hager called for action on SB 182: Tom Gomez advised that the Montana Insurance Department requested an amendment on page 2. He will prepare the amendment.

Discussion: Discussion was had concerning the definition of mental health. Mona Jamison provided copies of other states' terminology, and it was decided to use the same definition as Kansas.

Recommendation and Vote: Senator Norman moved that the amendment be adopted. The motion passed unanimously. Senator Lynch moved that SB 182 DO PASS AS AMENDED. Motion passed unanimously.

EXECUTIVE ACTION ON SB 204

Chairman Hager called for action on SB 204:

Discussion: Jim Ahrens, Montana Hospital Association, gave an explanation and clarification of changes and amendments to SB 204. He stated they met with Dean Sullivan and basically all the amendments except one were agreed upon. The one in question dealt with routine inquiry. Senator Hims1 requested that nurses be recognized by name (P. 11, line 7). An amendment by Senator Hims1 to that effect was passed. It was further moved to amend the Routine Inquiry section. (Senators in favor: 5, opposed: 2 (Norman and Hager). Senator Lynch moved that SB 204, AS AMENDED, DO PASS. MOTION PASSED UNANIMOUSLY.

ADJOURNMENT

Executive Meeting adjourned at 6:15 p.m.

SENATOR TOM HAGER, Chairman

TH/dq

senmindq.26

listing the breach. The landlord must remedy the situation or the rental contract can be terminated. Senator Hager wondered if there is no option other than to terminate the rental agreement. Mr. Hopgood stated that the tenant can also recover any actual damages.

Senator Norman questioned the language of the amendment, as to the obligation of the landlord to see that the device is in good order when the tenant moves in, but no obligation to maintain it. Mr. Hopgood stated that if the smoke detectors were not in good order when they were installed, then the landlord would be in breach of his duty to the tenant.

Closing by Sponsor:

Senator Brown stated that Kal Building Inspector present but he added that SB 207.

he would like to of Ted Wagner and both planned to be were unable to come. testify in support of



HEARING ON SENATE BILL 204

Presentation and Opening Comments by Sponsor: Senator Bill Norman, Senate District #28, advised that this bill is a revision of current law relating to donating of bodily organs. This law is a new concept of adjusting to the reality of modern technology. These laws often require some additional amendment or clarification, and that is what this bill is directed towards. The amendments are addressed to the medical and also the legal aspects. The bill tries to ascertain the availability of the organs without violating the law or offending people or the rights of someone facing death.

List of Testifying Proponents and What Group They Represent:

Diana Dowling, Montana Commission on Uniform State Laws
Jerome Loendorf, Montana Medical Association
Elaine Shea, Montana Eye Bank
Steve Browning, Montana Hospital Association
Bill Leary, Self
Mickey Nelson, Montana Coroners Association
Joe Mazurek, Commissioner, National Conference on Uniform State Laws

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Diana Dowling advised that she was specifically representing Robert E. Sullivan, a member of the Montana Commission on Uniform State Laws of Missoula, who is an expert in this area. Mr. Sullivan was unable to attend because of weather conditions. She stated this bill is a product of the National Conference of Commissions on Uniform State Laws, which Conference has been in existence for over 97 years, with about 300 lawyer members. The Montana members are appointed by the Governor and present members are Bob Sullivan, Senator Joe Mazurek, and herself. The Uniform Anatomical Gift Act was adopted in 1968 and Montana adopted it in 1969. All 50 states have adopted this Act. The purpose of the 1987 amendments is that the 1968 law was criticized because of the many technological advances and there is a greater demand for organs than there is a supply. There are about 10,000 people waiting at any one time for organs. One of the first purposes of the 1968 Act and this act is to promote volunteerism. It was achieved in the 1968 act, and it is achieved in the 1987 revisions. Another purpose was to expand the opportunity to give, and it simplifies the method of making these gifts. A third purpose was to make sure that the decision of the individual controls. That individual can give or refuse to give. They can limit the gift to a part of the body or to the purpose of the gift. This individual control is now irrevocable. Another purpose of the bill was to aid in the permission of giving. In order to carry out the intent of this bill a provision was inserted giving the right to search for the document gift. She explained other particulars regarding penalties for selling or purchasing organ parts. According to Ms. Dowling, most of the bill is simply for clarification purposes. She reviewed the various sections denoting changes. She submitted two pages of proposed amendments offered by Commissioner Sullivan (Exhibit #1). She stated for the record that because she is a state employee, she was on vacation time from her state job in representing the Uniform Law Commission.

Jerry Loendorf stated he was appearing on behalf of the Montana Medical Association. He stated they have reviewed the bill in its entirety and believe it makes good amendments to the present law. He believes it contains protection which such a bill should contain, ie the physician who determines the time of death is not the physician who will retrieve the organ unless the person who is making the donation has specifically

requested that physician to retrieve the organ. The provision of the bill he wished to discuss was Section 12 regarding routine inquiry and required requests. He pointed out one provision of the current law, found in Section 1. It states the administrator of a hospital is required to establish a written protocol for the identification of potential organ donors. It must encourage discretion and sensitivity with respect to the circumstances, views and beliefs of family of potential organ donors. Section 12 is labeled "Routine Inquiry and Required Request". The first requirement in Section 12 is that when a person is admitted to a hospital he must be asked if he is an organ or tissue donor. It is assumed it would be handled on the regular information sheet. Section 12 goes on to state that if the answer to that question is yes, then the hospital then requests a copy of the document. If the answer was no, then no further inquiry is made at that time. The hospital representative must then check with the attending physician before going further, and if the attending physician consents, then they can discuss with the patient the option to make or refuse to make a donation. The reason for checking with the attending physician is that there may be circumstances where it would cause the patient a lot of concern to be asked at that time if they wish to make the donation of an organ. In Subsection 2 of Section 12 regarding required request he stated they believe at least one amendment should be made which is one submitted by Commissioner Sullivan. The provision says that if at the time or near the time of death of the patient there is nothing in existence at the hospital indicating that the person has refused to make an anatomical gift, the hospital administrator is required to discuss that option with the family. The administrator is given one out in the bill. If the patient's organs are not in condition to be useful, then the hospital administrator would not have to ask. He stated his group believes one additional out should be given to the hospital administrator, and that is in one of the amendments that are proposed. It would add that if there are medical or emotional conditions under which the request would contribute to severe emotional distress, then in that situation a hospital administrator or his representative would not have to talk to the family about it. The inquiry has to be done with sensitivity and must consider the emotions of the people and also their religious beliefs. He stated with the addition of that amendment they would support this bill. He concluded there are numerous other amendments proposed by Commissioner Sullivan and his group would approve all of them. He believes the bill is a good one. It

requires some type of documentation, yet it allows the donor to revoke the gift orally.

Elaine Shea stated she is headquartered in Missoula and serves the entire state of Montana. Montana Eye Bank Board of Directors support the concept in general of this bill and they endorse the spirit of this proposal. Required request which was enacted in October, 1987, has worked very well. She stated 525 corneas were donated during 1988 in Montana. 325 were able to be transplanted. Tissue donation to the Eye Bank has increased 63% since the passage of required request, yet there is a critical shortage of corneas nationally. She stated they do have a question about Section 12, page 17, line 3, regarding who is the attending physician. They feel a definition or clarification is needed. They also have a concern about the practicality of checking with the physician each time consent is required. They appreciate the fact that the emphasis is on the donor in this bill - the individual makes the decision. They questioned whether routine inquiry would work best for the Montana Eye Bank.

Senator Hager advised that he had a Facsimile Transmission from Paul Buch, M.S., Technical Director, Montana Eye Bank Foundation, which he read to the committee: "I would like to emphasize that the requirement for enucleators to be licensed by the state board of medical examiners (page 4, line 7) be deleted. The enucleators with the Montana Eye Bank Foundation are volunteers and licensure would be detrimental to our program."

Steve Browning advised that he had chance to read Dean Sullivan's amendments. He stated he is testifying on behalf of SB 204, but stated there were three amendments he wished to bring to the attention of the committee. The most significant amendment is on page 16, line 22 (1) regarding routine request. He stated that they have received a number of calls with health officials who are involved with dealing with patients in connection with organ transplants. He pointed out that when applying for a Montana Drivers License you are asked whether or not you wish to donate your organs and it is so designated on the drivers license if you do. The point he wished to make is that the best time to ask a person about donating their organs is when they are healthy. He submitted to the committee a letter from Montana Deaconess Hospital which states "The fear and uncertainty this creates in patients who

are admitted for routine procedures will be tremendous and far outweighs any benefit." (Exhibit #2). He suggested that Subsection 1 should be deleted. One other amendment would be on page 11, Subsection 3, line 7. He suggested a nurse be added to the list of health care personnel. It was indicated that nurses are usually contacted in these cases. The third amendment suggested is page 14, line 25, in cases where recording equipment is not available to have the conversation witnessed by two people who could hear the conversation.

Bill Leary advised that he was appearing on behalf of himself as well as Senator Ray Lybeck of Kalispell who could not be here. He stated that he was representing the Montana Hospital Association at the time of the implementation of the original act, and was involved in the structure of the act. He believes that Senator Lybeck would agree that it is time to amend the act, bring it up to date, and would agree with Dean Sullivan's recommendations as well as some of the others mentioned today. His only suggestion for a potential amendment regards the granting of the donor card to those 18 years or under. He noted page 2, line 14, did not specify anything regarding underage applicants, and this should be addressed. He stated he supported the passage of the bill.

Mickey Nelson stated the Montana Coroners Association supports the bill with the amendments added. He stated their one problem area was on page 18, Section 3 (a), line 7. He sees no reason for other people being given the authority to go through the property of a deceased person other than the coroner. Page 15, Section 11, line 14, appears to him to be rather broad. He believes it should either be a family member or the coroner, rather than local public health official.

Senator Joe Mazurek, Senate District #23, stated he is a Commissioner on the National Conference on Uniform State Laws, stated that Ray Lybeck would have passage of this legislation high on his agenda. He stated he was also contacted by Dean Sullivan and one of the issues very important to him regards routine inquiry. He stated that issue was debated very strenuously on both sides before this act was ever adopted, and he believes the National Conference of Commissioners on Uniform State Law came down on the side that the public benefit derived from routine inquiry outweighs the uneasiness that someone employed at a hospital may encounter in making the inquiry. He stated Dean Sullivan played a critical role in the drafting of

this, has traveled around the country and testified at legislatures, and has attended many meetings of medical societies and organ procurement organizations. It was Senator Mazurek's opinion that Dean Sullivan would strongly feel that Subsection 1 of Section 12 should not be deleted. He urged serious and favorable consideration of SB 204.

Elaine Shea of the Montana Eye Bank advised she wished to clarify that Hawaii passed this version with only the deletion in reference to checking with a physician. They did not delete the whole routine inquiry. California deleted the whole routine inquiry. She also added that Dean Sullivan is a cornea recipient.

Questions From Committee Members:

Senator Lynch stated he has received several calls regarding the routine inquiry. He stated a constituent from Columbus Hospital informed him that this decreased the number of people who wanted to donate. He wondered if the routine inquiry could be a detriment to the program.

Senator Norman stated he did not believe it would be a detriment. Elaine Shea stated required request situations are very low in Montana. She stated there is no real need to change. According to Ms. Shea, required request substantially increased tissue donations. Organ donation is down nationally and it is down in the state. She feels routine inquiry is a way of tracking identification of donors ahead of time. She stated that the Montana Eye Bank is supporting Bob Sullivan's amendments, and the concepts of this bill.

Senator Lynch and Senator Himsel expressed concern over the questioning of persons upon entering the hospital.

Senator Rasmussen referred to Section 11, page 15, line 20, and wondered if after the official has made a reasonable effort to locate records, do they start "harvesting"?

Senator Norman replied by referring to Section 10, that they first make a reasonable effort to find if they want to use the body organ, then they look at the medical records of the patient, and if the patient has not expressed an interest in donating, they would then ask the spouse. The spokesman for the patient or the deceased should be identified before they proceed.

Discussion: Chairman Hager advised that he would like to

continue the hearing on SB 204 in Ex. Session on Friday 2/6/89. Hearing recessed.

ROLL CALL VOTE

SENATE COMMITTEE Conference Committee

Date 3/28/89 Bill No. SB 204 Time 8:45

NAME	YES	NO
Rep. Jessica Michney	X	
Rep. Dave Brown	X	
Rep. Ralph Eubank	X	
J. H. Lynce	X	
Bill Norman	X	
John Harp	X	

D. Quinn
 Secretary Rep. Brown made motion Chairman House recede from amendment
 Motion: 6-0 5-2 0-1 0-2 0-2
amendment 2 technical
In favor - 6 - 0