

SENATE BILL NO. 204

INTRODUCED BY NORMAN, MAZUREK

IN THE SENATE

JANUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY.
	FIRST READING.
FEBRUARY 8, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1989	PRINTING REPORT.
FEBRUARY 10, 1989	SECOND READING, DO PASS.
FEBRUARY 11, 1989	ENGROSSING REPORT.
FEBRUARY 13, 1989	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 20, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 2, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 4, 1989	PASSED CONSIDERATION FOR THE DAY.
MARCH 6, 1989	SECOND READING, CONCURRED IN.
MARCH 7, 1989	THIRD READING, CONCURRED IN. AYES, 91; NOES, 1.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 14, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

MARCH 17, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

MARCH 17, 1989

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

MARCH 29, 1989

CONFERENCE COMMITTEE REPORTED.

MARCH 31, 1989

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

MARCH 31, 1989

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 3, 1989

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *204*
2 INTRODUCED BY *Norman Maguire*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY THE UNIFORM ANATOMICAL GIFT ACT BY ADOPTING THE 1987
6 FORM OF THE ACT; AMENDING SECTIONS 50-5-212, 61-5-301,
7 72-17-102, 72-17-201, 72-17-202, 72-17-207, 72-17-208,
8 72-17-301, AND 72-17-312, MCA; REPEALING SECTIONS 72-17-104,
9 72-17-203 THROUGH 72-17-206, 72-17-209, 72-17-211, AND
10 72-17-212, MCA; AND PROVIDING AN APPLICABILITY PROVISION."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 **Section 1.** Section 50-5-212, MCA, is amended to read:

14 "50-5-212. Organ procurement program required. The
15 administrator of a hospital licensed under this chapter
16 shall as a condition of licensure under 50-5-201:

17 (1) establish a written protocol for the
18 identification of potential organ donors that:

19 (a) assures that families of potential organ donors
20 are made aware of the option of organ or tissue donation and
21 their option to decline;

22 (b) encourages discretion and sensitivity with respect
23 to the circumstances, views, and beliefs of families of
24 potential organ donors; and

25 (c) requires that a qualified organ procurement agency

1 be notified of potential organ donors;

2 (2) designate and train a person or persons to
3 represent him for purposes of requesting an anatomical gift
4 as provided in ~~72-17-211~~ [section 12]; and

5 (3) make known to the public that the hospital has an
6 organ procurement program as described in subsection (1)."

7 **Section 2.** Section 61-5-301, MCA, is amended to read:

8 "61-5-301. Indication on driver's license of intent to
9 make anatomical gift. (1) The department of justice shall
10 provide on each driver's license a space for indicating when
11 the licensee has executed a document under ~~72-17-204~~
12 72-17-201 of intent to make a gift of all or part of his
13 body under the Uniform Anatomical Gift Act.

14 (2) The department shall provide each applicant, at
15 the time of application for a new driver's license or for a
16 renewal, printed information calling the applicant's
17 attention to the provisions of this section. Each applicant
18 must be asked orally whether he wishes to make an anatomical
19 gift.

20 (3) Each applicant must be given an opportunity to
21 indicate in the space provided under subsection (1) his
22 intent to make an anatomical gift.

23 (4) The department shall issue to every applicant who
24 indicates such an intent a statement which, when signed by
25 the licensee in the manner prescribed in ~~72-17-204~~

72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(5) The department shall also furnish the licensee a means of revoking the document of gift upon the license."

Section 3. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. As used in this chapter the following definitions apply: (1) "Bank-or-storage-facility" means a facility--for--storage--of--human--bodies--or--parts thereof,--operated--by--or--under--the--supervision--of--a--person who--qualifies--as--a--donee--under--subsection--(1)(a)--or--(1)(b) of--72-17-202 "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of his the individual's body.

(6) "Eyebank--association--of--America" means the

organization--nationally--recognized--by--that--name,--with headquarters--in--Houston,--Texas,--that--surveys--banks--or storage--facilities--for--the--storage--of--eye--tissue--upon--their requests--and--grants--membership--and--certification--status--to any--such--bank--or--storage--facility--that--it--finds--meets--its standards--and--requirements.

(6) "Enucleator" means an individual who is licensed by the state board of medical examiners to remove or process eyes or parts of eyes.

(7) "Hospital" means a hospital facility licensed, accredited, or approved under the laws of any state, includes a hospital or a facility operated as a hospital by the United States government, a state, or a subdivision thereof, although not required to be licensed under of a state laws.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(8) "Parts" means organs, tissues, eyes, bones, arteries, blood or other fluids, and any other portions. "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(9) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, or

association, or any other legal or commercial entity.

(10) "Physician" or "surgeon" means ~~a--physician-or~~
~~surgeon an individual~~ licensed or ~~otherwise~~ authorized to
practice medicine and surgery or osteopathy and surgery
under the laws of any state.

(11) "Procurement organization" means a person
licensed, accredited, or approved under the laws of any
state for procurement, distribution, or storage of human
bodies or parts.

~~{11}~~(12) "State" includes any means a state, district,
commonwealth, territory, insular or possession, ~~--and--any~~
~~other--area--subject--to--the--legislative--authority~~ of the
United States, ~~of America~~ the District of Columbia, or the
Commonwealth of Puerto Rico.

~~{12}~~(13) "Technician trained in eye enucleation" means
an individual who ~~has satisfactorily completed a--course--in~~
~~eye--enucleation--taught--by--an--ophthalmologist~~ is licensed by
the state board of medical examiners to remove or process a
part."

Section 4. Section 72-17-201, MCA, is amended to read:

"72-17-201. Persons who may make gift ~~---priorities---~~
~~donee--not--to--accept--over--objection--of--prior--right~~ Making,
amending, revoking, and refusing to make anatomical gifts by
an individual. (1) Any An individual of sound mind ~~--and~~ who
is at least 18 years of age or more may give all or any part

of his body for any purpose specified:

(a) make an anatomical gift for any of the purposes
stated in 72-17-202; ~~--the gift to take effect upon death~~

(b) limit an anatomical gift to one or more of those
purposes; or

(c) refuse to make an anatomical gift.

~~{2}--Any of the following persons, in order of priority~~
~~stated,--when--persons in prior classes are not available at~~
~~the time of death and in the absence--of--actual--notice--of~~
~~contrary--indications--by--the--decedent or actual notice of~~
~~opposition by a member of the same or--a--prior--class,--may~~
~~give--all or any part of the decedent's body for any purpose~~
~~specified in 72-17-202:~~

~~{a}--the spouse;~~

~~{b}--an adult son or daughter;~~

~~{c}--either parent;~~

~~{d}--an adult brother or sister;~~

~~{e}--a guardian of the person of the--decedent--at--the~~
~~time of his death;~~

~~{3}--The persons authorized by subsection {2} may make~~
~~the gift after or immediately before death;~~

~~{4}--If the donee has actual--notice--of--contrary~~
~~indications--by the decedent or that a gift by a member of a~~
~~class is opposed by a member of the same or a--prior--class,~~
~~the donee shall not accept the gift;~~

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift not made by will only by:

(a) a signed statement;

(b) an oral statement made in the presence or two individuals;

(c) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(d) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6).

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or

(iii) any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under [section 10] or on a removal or release of other parts under [section 11].

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9)."

Section 5. Section 72-17-202, MCA, is amended to read:

"72-17-202. Persons who may become donees -- permissible purposes of gift for which anatomical gifts may be made ---nonliability. (1) The following persons may become donees of anatomical gifts of bodies or parts thereof for the purposes stated:

(a) any a hospital, surgeon, or physician, or procurement organization for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(b) any an accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, ~~or therapy; or~~

(c) ~~any bank or storage facility licensed, accredited,~~

~~or approved under the laws of any state for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation, or~~

~~(d) any specified a designated individual for therapy or transplantation needed by him that individual.~~

~~(2) A physician, surgeon, technician trained in eye enucleation, hospital, bank or storage facility, or donee acting in good faith compliance with the provisions of this chapter is not liable in a civil action to any claimant who alleges that the claimant's authorization for use of the body or part was required.~~

(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by a hospital.

(3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under [section 10(1)], the donee may not accept the anatomical gift."

Section 6. Section 72-17-207, MCA, is amended to read:

"72-17-207. ~~Gift authorizes examination~~ Examination -- autopsy -- liability. (1) ~~A An anatomical gift of all or~~

1 ~~part---of--a--body~~ authorizes any reasonable examination
2 necessary to assure medical acceptability of the gift for
3 the purposes intended.

4 (2) The provisions of this chapter are subject to the
5 laws of this state governing autopsies.

6 (3) A hospital, physician, surgeon, coroner,
7 enucleator, technician, or other person who acts in
8 accordance with this chapter or with the applicable
9 anatomical gift act of another state or attempts in good
10 faith to do so is not liable for that act in a civil action
11 or criminal proceeding.

12 (4) An individual who makes an anatomical gift
13 pursuant to 72-17-201 or [section 10] and the individual's
14 estate are not liable for any injury or damage that may
15 result from the making or use of the anatomical gift."

16 **Section 7.** Section 72-17-208, MCA, is amended to read:

17 **"72-17-208. Delivery of document of gift to--expedite**
18 **procedures-----delivery--not--necessary--to--validity. (1)**
19 **Delivery of a document of gift during the donor's lifetime**
20 **is not required for the validity of an anatomical gift.**

21 **(2) If the an anatomical gift is made by-the-donor to**
22 **a specified designated donee, the will,--card,--or--other**
23 **document of gift, or an-executed a copy, thereof may be**
24 **delivered to the donee to expedite the appropriate**
25 **procedures immediately after death. Delivery---is---not**

1 **necessary-to-the-validity-of-the-gift.**

2 **(2) The will,--card,--or--other document of gift, or an**
3 **executed a copy, thereof may be deposited in any hospital,**
4 **bank---or--storage--facility procurement organization, or**
5 **registry office that accepts it for safekeeping or for**
6 **facilitation of procedures after death.**

7 **(3) On request of any an interested party person, upon**
8 **or after the donor's death, the person in possession shall**
9 **produce allow the interested person to examine or copy the**
10 **document for-examination of gift."**

11 **Section 8.** Section 72-17-301, MCA, is amended to read:

12 **"72-17-301. Rights and duties at death. (1) Rights of**
13 **a donee created by an anatomical gift are superior to rights**
14 **of others under 72-17-201(2), except with respect to**
15 **autopsies. The A donee may accept or reject the an**
16 **anatomical gift. If the donee accepts a an anatomical gift**
17 **of the entire body, he the donee may, subject to the terms**
18 **of the gift, authorize may allow** embalming and the use of
19 the body in funeral services. If the gift is of a part of
20 the body, the donee, upon the death of the donor and prior
21 to before embalming, shall cause the part to be removed
22 without unnecessary mutilation. After removal of the part,
23 custody of the remainder of the body vests in the surviving
24 spouse,--next--of--kin,--or--other--persons person under
25 obligation to dispose of the body.

(2) The time of death ~~shall~~ must be determined by a physician or surgeon who ~~tends~~ attends the donor at his death or, if none, the physician or surgeon who certifies the death. ~~The~~ Neither the physician or surgeon who tends the donor at his death ~~or, if none, nor~~ the physician or surgeon who certifies determines the time of death ~~shall not~~ may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201(4).

(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon."

Section 9. Section 72-17-312, MCA, is amended to read:

"72-17-312. **Approval of eye banks.** Any bank or storage facility that furnishes to the department written evidence of its membership and certification and reports and recommendations for future compliance, granted by the eyebank association of America, is approved for receipt and storage of eye tissue for the term of such membership and certification and is eligible during such term to be a donee of eye tissue pursuant to ~~72-17-202(1)(c)~~ 72-17-202."

NEW SECTION. **Section 10. Making, revoking, and objecting to anatomical gifts by others.** (1) Any member of the following classes of persons, in the order of priority

listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

- (a) the spouse of the decedent;
- (b) an adult son or daughter of the decedent;
- (c) either parent of the decedent;
- (d) an adult brother or sister of the decedent;
- (e) a grandparent of the decedent; and
- (f) a guardian of the person of the decedent at the time of death.

(2) An anatomical gift may not be made by a person listed in subsection (1) if:

- (a) a person in a prior class is available at the time of death to make an anatomical gift;
- (b) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or
- (c) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) must be made by:

- (a) a document of gift signed by the person; or
- (b) the person's telegraphic, recorded telephonic, or

1 other recorded message, or other form of communication from
2 the person that is contemporaneously reduced to writing and
3 signed by the recipient.

4 (4) An anatomical gift by a person authorized under
5 subsection (1) may be revoked by any member of the same or a
6 prior class if, before procedures have begun for the removal
7 of a part from the body of the decedent, the physician,
8 surgeon, technician, or enucleator removing the part knows
9 of the revocation.

10 (5) A failure to make an anatomical gift under
11 subsection (1) is not an objection to the making of an
12 anatomical gift.

13 NEW SECTION. Section 11. Authorization by coroner or
14 local public health official. (1) The coroner may release
15 and permit the removal of a part from a body within that
16 official's custody, for transplantation or therapy, if:

17 (a) the official has received a request for the part
18 from a hospital, physician, surgeon, or procurement
19 organization;

20 (b) the official has made a reasonable effort, taking
21 into account the useful life of the part, to locate and
22 examine the decedent's medical records and inform persons
23 listed in [section 10(1)] of their option to make, or object
24 to making, an anatomical gift;

25 (c) the official does not know of a refusal or

1 contrary indication by the decedent or objection by a person
2 having priority to act as listed in [section 10(1)];

3 (d) the removal will be by a physician, surgeon, or
4 technician; but in the case of eyes, by one of them or by an
5 enucleator;

6 (e) the removal will not interfere with any autopsy or
7 investigation;

8 (f) the removal will be in accordance with accepted
9 standards; and

10 (g) cosmetic restoration will be done, if appropriate.

11 (2) If the body is not within the custody of the
12 coroner, the local public health officer may release and
13 permit the removal of any part from a body in the local
14 public health officer's custody for transplantation or
15 therapy if the requirements of subsection (1) are met.

16 (3) An official releasing and permitting the removal
17 of a part shall maintain a permanent record of the name of
18 the decedent, the person making the request, the date and
19 purpose of the request, the part requested, and the person
20 to whom it was released.

21 NEW SECTION. Section 12. Routine inquiry and required
22 request -- search and notification. (1) On or before
23 admission to a hospital, or as soon as possible thereafter,
24 a person designated by the hospital shall ask each patient
25 who is at least 18 years of age: "Are you an organ or tissue

1 donor?" If the answer is affirmative the person shall
 2 request a copy of the document of gift. If the answer is
 3 negative or there is no answer and the attending physician
 4 consents, the person designated shall discuss with the
 5 patient the option to make or refuse to make an anatomical
 6 gift. The answer to the question, an available copy of any
 7 document of gift or refusal to make an anatomical gift, and
 8 any other relevant information, must be placed in the
 9 patient's medical record.

10 (2) If, at or near the time of death of a patient,
 11 there is no medical record that the patient has made or
 12 refused to make an anatomical gift, the hospital
 13 administrator or a representative designated by the
 14 administrator shall discuss the option to make or refuse to
 15 make an anatomical gift and request the making of an
 16 anatomical gift pursuant to [section 10(1)]. The request
 17 must be made with reasonable discretion and sensitivity to
 18 the circumstances of the family. A request is not required
 19 if the gift is not suitable, based upon accepted medical
 20 standards, for a purpose specified in 72-17-202. An entry
 21 must be made in the medical record of the patient, stating
 22 the name and affiliation of the individual making the
 23 request and the name, response, and relationship to the
 24 patient of the person to whom the request was made. The
 25 department shall adopt rules to implement this subsection.

1 (3) The following persons shall make a reasonable
 2 search for a document of gift or other information
 3 identifying the bearer as a donor or as an individual who
 4 has refused to make an anatomical gift:

5 (a) a law enforcement officer, fireman, paramedic, or
 6 other emergency rescuer finding an individual whom the
 7 searcher believes is dead or near death; and

8 (b) a hospital, upon the admission of an individual at
 9 or near the time of death, if there is not immediately
 10 available any other source of that information.

11 (4) If a document of gift or evidence of refusal to
 12 make an anatomical gift is located by the search required by
 13 subsection (3)(a) and the individual or body to whom it
 14 relates is taken to a hospital, the hospital must be
 15 notified of the contents and the document or other evidence
 16 must be sent to the hospital.

17 (5) If, at or near the time of death of a patient, a
 18 hospital knows that an anatomical gift has been made
 19 pursuant to [section 10(1)] or a release and removal of a
 20 part has been permitted pursuant to [section 11], or that a
 21 patient or an individual identified as in transit to the
 22 hospital is a donor, the hospital shall notify the donee if
 23 one is named and known to the hospital; if not, it shall
 24 notify an appropriate procurement organization. The
 25 hospital shall cooperate in the implementation of the

1 anatomical gift or release and removal of a part.

2 (6) A person who fails to discharge the duties imposed
3 by this section is not subject to criminal or civil
4 liability but is subject to appropriate administrative
5 sanctions.

6 NEW SECTION. Section 13. Delivery of document of
7 gift. (1) Delivery of a document of gift during the donor's
8 lifetime is not required for the validity of an anatomical
9 gift.

10 (2) If an anatomical gift is made to a designated
11 donee, the document of gift, or a copy, may be delivered to
12 the donee to expedite the appropriate procedures after
13 death. The document of gift, or a copy, may be deposited in
14 any hospital, procurement organization, or registry office
15 that accepts it for safekeeping or for facilitation of
16 procedures after death. On request of an interested person,
17 upon or after the donor's death, the person in possession
18 shall allow the interested person to examine or copy the
19 document of gift.

20 NEW SECTION. Section 14. Coordination of procurement
21 and use. Each hospital in this state, after consultation
22 with other hospitals and procurement organizations, shall
23 establish agreements or affiliations for coordination of
24 procurement and use of human bodies and parts.

25 NEW SECTION. Section 15. Sale or purchase of parts

1 prohibited. (1) A person may not knowingly, for valuable
2 consideration, purchase or sell a part for transplantation
3 or therapy, if removal of the part is intended to occur
4 after the death of the decedent.

5 (2) Valuable consideration does not include reasonable
6 payment for the removal, processing, disposal, preservation,
7 quality control, storage, transportation, or implantation of
8 a part.

9 (3) A person who violates this section is guilty of a
10 felony and upon conviction is subject to a fine not
11 exceeding \$50,000 or imprisonment not exceeding 5 years, or
12 both.

13 NEW SECTION. Section 16. Applicability. [This act]
14 applies to a document of gift, revocation, or refusal to
15 make an anatomical gift signed by the donor or a person
16 authorized to make or object to making an anatomical gift
17 before, on, or after October 1, 1989.

18 NEW SECTION. Section 17. Severability. If a part of
19 [this act] is invalid, all valid parts that are severable
20 from the invalid part remain in effect. If a part of [this
21 act] is invalid in one or more of its applications, the part
22 remains in effect in all valid applications that are
23 severable from the invalid applications.

24 NEW SECTION. Section 18. Extension of authority. Any
25 existing authority to make rules on the subject of the

1 provisions of [this act] is extended to the provisions of
2 [this act].

3 NEW SECTION. Section 19. Repealer. Sections
4 72-17-104, 72-17-203 through 72-17-206, 72-17-209,
5 72-17-211, and 72-17-212, MCA, are repealed.

6 NEW SECTION. Section 20. Codification instruction.
7 [Sections 10 through 15] are intended to be codified as an
8 integral part of Title 72, chapter 17, and the provisions of
9 Title 72, chapter 17, apply to [sections 10 through 15].

-End-

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

SENATE BILL NO. 204

INTRODUCED BY NORMAN, MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE UNIFORM ANATOMICAL GIFT ACT BY ADOPTING THE 1987 FORM OF THE ACT; AMENDING SECTIONS 50-5-212, 61-5-301, 72-17-102, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-301, 72-17-311, AND 72-17-312, MCA; REPEALING SECTIONS 72-17-104, 72-17-203 THROUGH 72-17-206, 72-17-209, 72-17-211, AND 72-17-212, MCA; AND PROVIDING AN APPLICABILITY PROVISION."

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

Section 1. Section 50-5-212, MCA, is amended to read:

"50-5-212. Organ procurement program required. The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in ~~72-17-211~~ [section 12 13]; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1)."

Section 2. Section 61-5-301, MCA, is amended to read:

"61-5-301. Indication on driver's license of intent to make anatomical gift. (1) The department of justice shall provide on each driver's license a space for indicating when the licensee has executed a document under ~~72-17-204~~ 72-17-201 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally whether he wishes to make an anatomical gift.

(3) Each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(4) The department shall issue to every applicant who indicates such an intent a statement which, when signed by

the licensee in the manner prescribed in 72-17-204 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(5) The department shall also furnish the licensee a means of revoking the document of gift upon the license."

Section 3. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. As used in this chapter the following definitions apply: (1) "Bank-or-storage-facility" means a facility for storage of human bodies or parts thereof, operated by or under the supervision of a person who qualifies as a donee under subsection (1)(a) or (1)(b) of 72-17-202 "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of his the individual's body.

(5) "Eyebank--association--of--America"--means--the organization--nationally--recognized--by--that--name,--with headquarters--in--Houston,--Texas,--that--surveys--banks--or storage--facilities--for--the--storage--of--eye--tissue--upon--their requests--and--grants--membership--and--certification--status--to any--such--bank--or--storage--facility--that--it--finds--meets--its standards--and--requirements.

(6) "Enucleator" means an individual who is licensed by the state board of medical examiners CERTIFIED PURSUANT TO 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a hospital facility licensed, accredited, or approved under the laws of any state, includes a hospital or a facility operated as a hospital by the United States government, a state, or a subdivision thereof, although not required to be licensed under of a state laws.

(8) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(9) "OPHTHALMOLOGIST" MEANS A LICENSED PHYSICIAN OR SURGEON WHO SPECIALIZES IN THE TREATMENT OR CORRECTION OF DISEASES OF THE EYE.

(10) "Parts" means organs, tissues, eyes, bones, arteries, blood or other fluids, and any other portions. Part means an organ, tissue, eye, bone, artery, blood,

1 fluid, or other portion of a human body.

2 ~~{9}~~{10} "Person" means an individual, corporation,
3 government, or governmental subdivision or agency, business
4 trust, estate, trust, partnership, joint venture, or
5 association, or any other legal or commercial entity.

6 ~~{10}~~{11} "Physician" or "surgeon" means ~~a physician--or~~
7 surgeon an individual licensed or otherwise authorized to
8 practice medicine and surgery or osteopathy and surgery
9 under the laws of any state.

10 ~~{11}~~{12} "Procurement organization" means a person
11 licensed, accredited, or approved under the laws of any
12 state for procurement, distribution, or storage of human
13 bodies or parts.

14 ~~{11}{12}~~{13} "State" includes--any means a state,
15 district,--commonwealth, territory, insular or possession,
16 and any other area subject to the legislative--authority of
17 the United States, of America the District of Columbia, or
18 the Commonwealth of Puerto Rico.

19 ~~{12}{13}~~{14} "Technician trained--in--eye--enucleation"
20 means an individual who ~~has--satisfactorily--completed-a~~
21 course-in-eye-enucleation-taught-by--an--ophthalmologist is
22 licensed CERTIFIED by the state board of medical examiners
23 to remove or process a part."

24 **Section 4.** Section 72-17-201, MCA, is amended to read:

25 "72-17-201. Persons who may make gift----priorities---

1 ~~donee-not-to-accept-over-objection-of--prior--right~~ Making,
2 amending, revoking, and refusing to make anatomical gifts by
3 an individual. (1) Any An individual of-sound-mind-and who
4 is at least 18 years of age or more may give-all-or-any-part
5 of-his-body-for-any-purpose-specified:

6 (a) make an anatomical gift for any of the purposes
7 stated in 72-17-202;--the-gift-to-take-effect-upon-death

8 (b) limit an anatomical gift to one or more of those
9 purposes; or

10 (c) refuse to make an anatomical gift.

11 ~~{2}~~--Any-of-the-following-persons,--in-order-of-priority
12 ~~stated,--when-persons-in-prior-classes-are-not--available--at~~
13 ~~the--time--of--death--and-in-the-absence-of-actual-notice-of~~
14 ~~contrary-indications-by-the-decedent--or--actual--notice--of~~
15 ~~opposition--by--a--member--of-the-same-or-a-prior-class,--may~~
16 ~~give-all-or-any-part-of-the-decedent's-body-for-any--purpose~~
17 ~~specified-in-72-17-202;~~

18 ~~{a}~~--the-spouse;

19 ~~{b}~~--an-adult-son-or-daughter;

20 ~~{c}~~--either-parent;

21 ~~{d}~~--an-adult-brother-or-sister;

22 ~~{e}~~--a-guardian--of--the-person-of-the-decedent-at-the
23 ~~time-of-his-death;~~

24 ~~{3}~~--The-persons-authorized-by-subsection-{2}-may--make
25 ~~the-gift-after-or-immediately-before-death;~~

~~(4) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.~~

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid

for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift not made by will only by:

(a) a signed statement;

(b) an oral statement made in the presence or OF two individuals;

(c) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(d) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6).

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or

1 (iii) any other writing used to identify the individual
2 as refusing to make an anatomical gift.

3 (b) During a terminal illness or injury, the refusal
4 may be an oral statement or other form of communication.

5 (10) In the absence of contrary indications by the
6 donor, an anatomical gift of a part is neither a refusal to
7 give other parts nor a limitation on an anatomical gift
8 under [section 10 11] or on a removal or release of other
9 parts under [section 11 12].

10 (11) In the absence of contrary indications by the
11 donor, a revocation or amendment of an anatomical gift is
12 not a refusal to make another anatomical gift. If the donor
13 intends a revocation to be a refusal to make an anatomical
14 gift, the donor shall make the refusal pursuant to
15 subsection (9)."

16 **Section 5.** Section 72-17-202, MCA, is amended to read:

17 "72-17-202. Persons who may become donees --
18 permissible purposes of gift for which anatomical gifts may
19 be made ----nonliability. (1) The following persons may
20 become donees of anatomical gifts of bodies or parts thereof
21 for the purposes stated:

22 (a) any a hospital, surgeon, or physician, or
23 procurement organization for medical or dental education,
24 research, advancement of medical or dental science, therapy,
25 or transplantation;

1 (b) any an accredited medical or dental school,
2 college, or university for education, research, advancement
3 of medical or dental science, ~~or therapy~~; or

4 (c) ~~any bank or storage facility licensed, accredited,~~
5 ~~or approved under the laws of any state for medical or~~
6 ~~dental education, research, advancement of medical or dental~~
7 ~~science, therapy, or transplantation; or~~

8 ~~(d) any specified a designated~~ individual for therapy
9 or transplantation needed by him that individual.

10 ~~(2) A physician, surgeon, technician, trained in eye~~
11 ~~enucleation, hospital, bank or storage facility, or donee~~
12 ~~acting in good faith compliance with the provisions of this~~
13 ~~chapter is not liable in a civil action to any claimant who~~
14 ~~alleges that the claimant's authorization for use of the~~
15 ~~body or part was required.~~

16 (2) An anatomical gift may be made to a designated
17 donee or without designating a donee. If a donee is not
18 designated or if the donee is not available or rejects the
19 anatomical gift, the anatomical gift may be accepted by a
20 hospital.

21 (3) If the donee knows of the decedent's refusal or
22 contrary indications to make an anatomical gift or that an
23 anatomical gift by a member of a class having priority to
24 act is opposed by a member of the same class or a prior
25 class under [section 10(1) 11], the donee may not accept the

1 anatomical gift."

2 **Section 6.** Section 72-17-207, MCA, is amended to read:

3 "72-17-207. Gift-authorizes-examination Examination --
4 autopsy -- liability. (1) A An anatomical gift of-all-or
5 part--of--a--body authorizes any reasonable examination
6 necessary to assure medical acceptability of the gift for
7 the purposes intended.

8 (2) The provisions of this chapter are subject to the
9 laws of this state governing autopsies.

10 (3) A hospital, physician, surgeon, coroner,
11 enucleator, technician, NURSE, or other person who acts in
12 accordance with this chapter or with the applicable
13 anatomical gift act of another state or attempts in good
14 faith to do so is not liable for that act in a civil action
15 or criminal proceeding.

16 (4) An individual who makes an anatomical gift
17 pursuant to 72-17-201 or [section 10 11] and the
18 individual's estate are not liable for any injury or damage
19 that may result from the making or use of the anatomical
20 gift."

21 **Section 7.** Section 72-17-208, MCA, is amended to read:

22 "72-17-208. Delivery of document of gift to--expedite
23 procedures-----delivery--not--necessary--to--validity. (1)
24 Delivery of a document of gift during the donor's lifetime
25 is not required for the validity of an anatomical gift.

1 (2) If the an anatomical gift is made by-the-donor to
2 a specified designated donee, the will,--card,--or--other
3 document of gift, or an-executed a copy, thereof may be
4 delivered to the donee to expedite the appropriate
5 procedures immediately after death. Delivery---is---not
6 necessary-to-the-validity-of-the-gift.

7 (2) The will,--card,--or--other document of gift, or an
8 executed a copy, thereof may be deposited in any hospital,
9 bank---or---storage---facility procurement organization, or
10 registry office that accepts it for safekeeping or for
11 facilitation of procedures after death.

12 (3) On request of any an interested party person, upon
13 or after the donor's death, the person in possession shall
14 produce allow the interested person to examine or copy the
15 document for-examination of gift."

16 **Section 8.** Section 72-17-301, MCA, is amended to read:

17 "72-17-301. Rights and duties at death. (1) Rights of
18 a donee created by an anatomical gift are superior to rights
19 of others under 72-17-201(2) [SECTION 11(1)(C)], except with
20 respect to autopsies. The A donee may accept or reject the
21 an anatomical gift. If the donee accepts a an anatomical
22 gift of the entire body, he the donee may, subject to the
23 terms of the gift, authorize may allow embalming and the use
24 of the body in funeral services. If the gift is of a part of
25 the body, the donee, upon the death of the donor and prior

to before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse---next---of---kin---or---other---persons person under obligation to dispose of the body.

(2) The time of death ~~shall~~ must be determined by a physician or surgeon who tends attends the donor at his death or, if none, the physician or surgeon who certifies the death. ~~The~~ Neither the physician or surgeon who tends ATTENDS the donor at his death ~~or,---if---none, nor~~ the physician or surgeon who certifies determines the time of death ~~shall---not~~ may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201(4).

(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon."

SECTION 9. SECTION 72-17-311, MCA, IS AMENDED TO READ:

"72-17-311. Eye enucleations -- technicians enucleators -- qualifications. (1) Eye enucleations for purposes of anatomical gifts may be performed:

(a) by a licensed physician or surgeon; or

(b) by ~~a---technician~~ an enucleator trained in eye

enucleation.

(2) An acceptable course in eye enucleation must include the anatomy and physiology of the eye, instruction in maintaining a sterile field during the enucleation procedure, and use of appropriate instruments and sterile procedures for removal and preservation of corneal tissue.

(3) Certification of satisfactory completion of a course in eye enucleation must be provided by the ophthalmologist who teaches the course. This certification qualifies ~~a---technician~~ an enucleator to perform eye enucleations for a period of 3 years from the date of completion of the course."

Section 10. Section 72-17-312, MCA, is amended to read:

"72-17-312. **Approval of eye banks.** Any bank or storage facility that furnishes to the department written evidence of its membership and certification and reports and recommendations for future compliance, granted by the eyebank association of America, is approved for receipt and storage of eye tissue for the term of such membership and certification and is eligible during such term to be a donee of eye tissue pursuant to ~~72-17-202(1)(c)~~ 72-17-202."

NEW SECTION. Section 11. Making, revoking, and objecting to anatomical gifts by others. (1) Any member of the following classes of persons, in the order of priority

1 listed, may make an anatomical gift of all or a part of the
2 decedent's body for an authorized purpose, unless the
3 decedent, at the time of death, had made an unrevoked
4 refusal to make that anatomical gift:

- 5 (a) the spouse of the decedent;
- 6 (b) an adult son or daughter of the decedent;
- 7 (c) either parent of the decedent;
- 8 (d) an adult brother or sister of the decedent;
- 9 (e) a grandparent of the decedent; and
- 10 (f) a guardian of the person of the decedent at the
11 time of death.

12 (2) An anatomical gift may not be made by a person
13 listed in subsection (1) if:

- 14 (a) a person in a prior class is available at the time
15 of death to make an anatomical gift;
- 16 (b) the person proposing to make an anatomical gift
17 knows of a refusal or contrary indications by the decedent;
18 or
- 19 (c) the person proposing to make an anatomical gift
20 knows of an objection to making an anatomical gift by a
21 member of the person's class or a prior class.

22 (3) An anatomical gift by a person authorized under
23 subsection (1) must be made by:

- 24 (a) a document of gift signed by the person; or
- 25 (b) the person's telegraphic, recorded telephonic, or

1 other recorded message, or other form of communication from
2 the person that is contemporaneously reduced to writing and
3 signed by the recipient.

4 (4) An anatomical gift by a person authorized under
5 subsection (1) may be revoked by any member of the same or a
6 prior class if, before procedures have begun for the removal
7 of a part from the body of the decedent, the physician,
8 surgeon, technician, or enucleator removing the part knows
9 of the revocation.

10 (5) A failure to make an anatomical gift under
11 subsection (1) is not an objection to the making of an
12 anatomical gift.

13 NEW SECTION. **Section 12. Authorization by coroner or**
14 **local public health official.** (1) The coroner may release
15 and permit the removal of a part from a body within that
16 official's custody, for transplantation or therapy, if:

17 (a) the official has received a request for the part
18 from a hospital, physician, surgeon, or procurement
19 organization;

20 (b) the official has made a reasonable effort, taking
21 into account the useful life of the part, to locate and
22 examine the decedent's medical records and inform persons
23 listed in [section ~~10(1)~~ 11(1)] of their option to make, or
24 object to making, an anatomical gift;

25 (c) the official does not know of a refusal or

1 contrary indication by the decedent or objection by a person
2 having priority to act as listed in [section 10(1) 11(1)];

3 (d) the removal will be by a physician, surgeon, or
4 technician; but in the case of eyes, by one of them or by an
5 enucleator;

6 (e) the removal will not interfere with any autopsy or
7 investigation;

8 (f) the removal will be in accordance with accepted
9 standards; and

10 (g) cosmetic restoration will be done, if appropriate.

11 (2) If the body is not within the custody of the
12 coroner, the local public health officer may release and
13 permit the removal of any part from a body in the local
14 public health officer's custody for transplantation or
15 therapy if the requirements of subsection (1) are met.

16 (3) An official releasing and permitting the removal
17 of a part shall maintain a permanent record of the name of
18 the decedent, the person making the request, the date and
19 purpose of the request, the part requested, and the person
20 to whom it was released.

21 NEW SECTION. Section 13. Routine inquiry and required
22 request -- search and notification. (1) -- On or before
23 admission to a hospital or as soon as possible thereafter,
24 a person designated by the hospital shall ask each patient
25 who is at least 18 years of age: "Are you an organ or tissue

1 donor?" If the answer is affirmative the person shall
2 request a copy of the document of gift; if the answer is
3 negative or there is no answer and the attending physician
4 consents, the person designated shall discuss with the
5 patient the option to make or refuse to make an anatomical
6 gift. The answer to the question, an available copy of any
7 document of gift or refusal to make an anatomical gift, and
8 any other relevant information, must be placed in the
9 patient's medical record.

10 (2)(1) If, at or near the time of death of a patient,
11 there is no medical record that the patient has made or
12 refused to make an anatomical gift, the hospital
13 administrator or a representative designated by the
14 administrator shall discuss the option to make or refuse to
15 make an anatomical gift and request the making of an
16 anatomical gift pursuant to [section 10(1) 11(1)]. The
17 request must be made with reasonable discretion and
18 sensitivity to the circumstances of the family. A request is
19 not required if the gift is not suitable, based upon
20 accepted medical standards, for a purpose specified in
21 72-17-202 OR IF THERE ARE MEDICAL OR EMOTIONAL CONDITIONS
22 UNDER WHICH THE REQUEST WOULD CONTRIBUTE TO SEVERE EMOTIONAL
23 DISTRESS. An entry must be made in the medical record of the
24 patient, stating the name and affiliation of the individual
25 making the request and the name, response, and relationship

1 to the patient of the person to whom the request was made.
2 The department shall adopt rules to implement this
3 subsection.

4 ~~(3)~~(2) The following persons shall make a reasonable
5 search for a document of gift or other information
6 identifying the bearer as a donor or as an individual who
7 has refused to make an anatomical gift:

8 (a) a law enforcement officer, fireman, paramedic, or
9 other emergency rescuer finding an individual whom the
10 searcher believes is dead or near death; and

11 (b) a hospital, upon the admission of an individual at
12 or near the time of death, if there is not immediately
13 available any other source of that information.

14 ~~(4)~~(3) If a document of gift or evidence of refusal to
15 make an anatomical gift is located by the search required by
16 subsection (3)(a) and the individual or body to whom it
17 relates is taken to a hospital, the hospital must be
18 notified of the contents and the document or other evidence
19 must be sent to the hospital.

20 ~~(5)~~(4) If, at or near the time of death of a patient,
21 a hospital knows that an anatomical gift has been made
22 pursuant to [section ~~10~~(1) 11(1)] or a release and removal
23 of a part has been permitted pursuant to [section ~~11~~ 12], or
24 that a patient or an individual identified as in transit to
25 the hospital is a donor, the hospital shall notify the donee

1 if one is named and known to the hospital; if not, it shall
2 notify an appropriate procurement organization. The
3 hospital shall cooperate in the implementation of the
4 anatomical gift or release and removal of a part.

5 ~~(6)~~(5) A person who fails to discharge the duties
6 imposed by this section is not subject to criminal or civil
7 liability but is subject to appropriate administrative
8 sanctions.

9 ~~NEW SECTION. Section 13. Delivery of document of~~
10 ~~gift. (1) Delivery of a document of gift during the donor's~~
11 ~~lifetime is not required for the validity of an anatomical~~
12 ~~gift.~~

13 ~~(2) If an anatomical gift is made to a designated~~
14 ~~donee, the document of gift, or a copy, may be delivered to~~
15 ~~the donee to expedite the appropriate procedures after~~
16 ~~death. The document of gift, or a copy, may be deposited in~~
17 ~~any hospital, procurement organization, or registry office~~
18 ~~that accepts it for safekeeping or for facilitation of~~
19 ~~procedures after death. On request of an interested person,~~
20 ~~upon or after the donor's death, the person in possession~~
21 ~~shall allow the interested person to examine or copy the~~
22 ~~document of gift.~~

23 ~~NEW SECTION. Section 14. Coordination of procurement~~
24 ~~and use. Each hospital in this state, after consultation~~
25 ~~with other hospitals and procurement organizations, shall~~

1 establish agreements or affiliations for coordination of
2 procurement and use of human bodies and parts.

3 NEW SECTION. Section 15. Sale or purchase of parts
4 prohibited. (1) A person may not knowingly, for valuable
5 consideration, purchase or sell a part for transplantation
6 or therapy, if removal of the part is intended to occur
7 after the death of the decedent.

8 (2) Valuable consideration does not include reasonable
9 payment for the removal, processing, disposal, preservation,
10 quality control, storage, transportation, or implantation of
11 a part.

12 (3) A person who violates this section is guilty of a
13 felony and upon conviction is subject to a fine not
14 exceeding \$50,000 or imprisonment not exceeding 5 years, or
15 both.

16 NEW SECTION. Section 16. Applicability. [This act]
17 applies to a document of gift, revocation, or refusal to
18 make an anatomical gift signed by the donor or a person
19 authorized to make or object to making an anatomical gift
20 before, on, or after October 1, 1989.

21 NEW SECTION. Section 17. Severability. If a part of
22 [this act] is invalid, all valid parts that are severable
23 from the invalid part remain in effect. If a part of [this
24 act] is invalid in one or more of its applications, the part
25 remains in effect in all valid applications that are

1 severable from the invalid applications.

2 NEW SECTION. Section 18. Extension of authority. Any
3 existing authority to make rules on the subject of the
4 provisions of [this act] is extended to the provisions of
5 [this act].

6 NEW SECTION. Section 19. Repealer. Sections
7 72-17-104, 72-17-203 through 72-17-206, 72-17-209,
8 72-17-211, and 72-17-212, MCA, are repealed.

9 NEW SECTION. Section 20. Codification instruction.
10 [Sections ~~10~~ 11 through 15] are intended to be codified as
11 an integral part of Title 72, chapter 17, and the provisions
12 of Title 72, chapter 17, apply to [sections ~~10~~ 11 through
13 15].

-End-

1 SENATE BILL NO. 204

2 INTRODUCED BY NORMAN, MAZUREK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
5 CLARIFY THE UNIFORM ANATOMICAL GIFT ACT BY ADOPTING THE 1987
6 FORM OF THE ACT; AMENDING SECTIONS 50-5-212, 61-5-301,
7 72-17-102, 72-17-201, 72-17-202, 72-17-207, 72-17-208,
8 72-17-301, 72-17-311, AND 72-17-312, MCA; REPEALING SECTIONS
9 72-17-104, 72-17-203 THROUGH 72-17-206, 72-17-209,
10 72-17-211, AND 72-17-212, MCA; AND PROVIDING AN
11 APPLICABILITY PROVISION."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 50-5-212, MCA, is amended to read:

15 "50-5-212. Organ procurement program required. The
16 administrator of a hospital licensed under this chapter
17 shall as a condition of licensure under 50-5-201:

18 (1) establish a written protocol for the
19 identification of potential organ donors that:

20 (a) assures that families of potential organ donors
21 are made aware of the option of organ or tissue donation and
22 their option to decline;

23 (b) encourages discretion and sensitivity with respect
24 to the circumstances, views, and beliefs of families of
25 potential organ donors; and


There is no change on SB 204 and will
not be reprinted. Please refer to
second reading copy (yellow) for
complete text.

CORRECTED STANDING COMMITTEE REPORT

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

SENATE BILL NO. 204

INTRODUCED BY NORMAN, MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE UNIFORM ANATOMICAL GIFT ACT BY ADOPTING THE 1987 FORM OF THE ACT; AMENDING SECTIONS 50-5-212, 61-5-301, 72-17-102, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-301, 72-17-311, AND 72-17-312, MCA; REPEALING SECTIONS 72-17-104, 72-17-203 THROUGH 72-17-206, 72-17-209, 72-17-211, AND 72-17-212, MCA; AND PROVIDING AN APPLICABILITY PROVISION."

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

Section 1. Section 50-5-212, MCA, is amended to read:

"50-5-212. Organ procurement program required. The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in ~~72-17-211~~ [section 12 13]; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1)."

Section 2. Section 61-5-301, MCA, is amended to read:

"61-5-301. Indication on driver's license of intent to make anatomical gift. (1) The department of justice shall provide on each driver's license a space for indicating when the licensee has executed a document under ~~72-17-204~~ 72-17-201 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally whether he wishes to make an anatomical gift.

(3) Each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(4) The department shall issue to every applicant who indicates such an intent a statement which, when signed by

1 the licensee in the manner prescribed in 72-17-204
2 72-17-201, constitutes a document of anatomical gift. This
3 statement must be printed on a sticker that the donor may
4 attach permanently to the back of his driver's license.

5 (5) The department shall also furnish the licensee a
6 means of revoking the document of gift upon the license."

7 **Section 3.** Section 72-17-102, MCA, is amended to read:

8 "72-17-102. Definitions. As used in this chapter the
9 following definitions apply: (1) "Bank-or-storage-facility"
10 means-a-facility--for--storage--of--human--bodies--or--parts
11 thereof--operated--by--or--under--the-supervision-of-a-person
12 who-qualifies-as-a-donee-under-subsection-(1)(a)--or--(1)(b)
13 of--72-17-202 "Anatomical gift" means a donation of all or
14 part of a human body to take effect upon or after death.

15 (2) "Decedent" means a deceased individual and
16 includes a stillborn infant or fetus.

17 (3) "Department" means the department of health and
18 environmental sciences provided for in Title 2, chapter 15,
19 part 21.

20 (4) "Document of gift" means a card, a statement
21 attached to or imprinted on a motor vehicle operator's
22 license, a will, or other writing used to make an anatomical
23 gift.

24 (4)(5) "Donor" means an individual who makes a gift of
25 all or part of his the individual's body.

1 (5)--"Eyebank--association--of--America"--means--the
2 organization--nationally--recognized--by--that--name,--with
3 headquarters--in--Houston,--Texas,--that--surveys--banks--or
4 storage-facilities-for-the-storage-of-eye-tissue-upon--their
5 requests--and--grants-membership-and-certification-status-to
6 any-such-bank-or-storage-facility-that-it--finds--meets--its
7 standards-and-requirements.

8 (6) "Enucleator" means an individual who is licensed
9 by-the-state-board-of-medical-examiners CERTIFIED PURSUANT
10 TO 72-17-311 to remove or process eyes or parts of eyes.

11 (6)(7) "Hospital" means a hospital facility licensed,
12 accredited, or approved under the laws of any state;
13 includes--a-hospital or a facility operated as a hospital by
14 the United States government, a state, or a subdivision
15 thereof,--although--not--required--to-be-licensed-under of a
16 state laws.

17 (7)--"Ophthalmologist"--means--a--licensed--physician--or
18 surgeon--who--specializes--in-the-treatment-or-correction-of
19 diseases-of-the-eye.

20 (8) "OPHTHALMOLOGIST" MEANS A LICENSED PHYSICIAN OR
21 SURGEON WHO SPECIALIZES IN THE TREATMENT OR CORRECTION OF
22 DISEASES OF THE EYE.

23 (8)(9) "Parts"--means--organs,--tissues,--eyes,--bones,
24 arteries,--blood--or--other--fluids,--and-any-other-portions
25 Part" means an organ, tissue, eye, bone, artery, blood,

1 fluid, or other portion of a human body.

2 {9}{10} "Person" means an individual, corporation,
3 government, or governmental subdivision or agency, business
4 trust, estate, trust, partnership, joint venture, or
5 association, or any other legal or commercial entity.

6 {10}{11} "Physician" or "surgeon" means ~~a physician--or~~
7 surgeon an individual licensed or otherwise authorized to
8 practice medicine and surgery or osteopathy and surgery
9 under the laws of any state.

10 {11}{12} "Procurement organization" means a person
11 licensed, accredited, or approved under the laws of any
12 state for procurement, distribution, or storage of human
13 bodies or parts.

14 {11}{12}{13} "State" includes ~~any~~ means a state,
15 district, ~~commonwealth~~, territory, insular or possession,
16 and any other area subject to the legislative authority of
17 the United States, ~~of America~~ the District of Columbia, or
18 the Commonwealth of Puerto Rico.

19 {12}{13}{14} "Technician trained ~~in eye enucleation~~"
20 means an individual who ~~has satisfactorily completed a~~
21 course in eye enucleation taught by an ophthalmologist is
22 licensed CERTIFIED by the state board of medical examiners
23 to remove or process a part."

24 Section 4. Section 72-17-201, MCA, is amended to read:

25 "72-17-201. Persons who may make gift---priorities---

1 ~~donee not to accept over objection of--prior--right~~ Making,
2 ~~amending, revoking, and refusing to make anatomical gifts by~~
3 ~~an individual.~~ (1) Any An individual of sound mind and who
4 is at least 18 years of age or more may give all or any part
5 of his body for any purpose specified:

6 (a) make an anatomical gift for any of the purposes
7 stated in 72-17-202; the gift to take effect upon death

8 (b) limit an anatomical gift to one or more of those
9 purposes; or

10 (c) refuse to make an anatomical gift.

11 {2}--Any of the following persons, in order of priority
12 stated, when persons in prior classes are not available at
13 the time of death and in the absence of actual notice of
14 contrary indications by the decedent or actual notice of
15 opposition by a member of the same or a prior class, may
16 give all or any part of the decedent's body for any purpose
17 specified in 72-17-202:

18 (a) ~~the spouse;~~

19 (b) ~~an adult son or daughter;~~

20 (c) ~~either parent;~~

21 (d) ~~an adult brother or sister;~~

22 (e) ~~a guardian of the person of the decedent at the~~
23 ~~time of his death;~~

24 {3}--The persons authorized by subsection {2} may make
25 the gift after or immediately before death;

~~(4) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.~~

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid

for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift not made by will only by:

(a) a signed statement;

(b) an oral statement made in the presence or OF two individuals;

(c) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(d) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6).

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or

(iii) any other writing used to identify the individual as refusing to make an anatomical gift.

(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under [section 10 11] or on a removal or release of other parts under [section 11 12].

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9)."

Section 5. Section 72-17-202, MCA, is amended to read:

"72-17-202. Persons who may become donees -- permissible purposes of gift for which anatomical gifts may be made ----nonliability. (1) The following persons may become donees of anatomical gifts of-bodies-or-parts-thereof for the purposes stated:

(a) any a hospital, surgeon, or physician, or procurement organization for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(b) any an accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy; or

(c) any-bank-or-storage-facility-licensed, accredited, or approved under the laws of any state for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(d) any specified a designated individual for therapy or transplantation needed by him that individual.

(2) A physician, surgeon, technician trained in eye enucleation, hospital, bank or storage facility, or donee acting in good faith compliance with the provisions of this chapter is not liable in a civil action to any claimant who alleges that the claimant's authorization for use of the body or part was required.

(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by a hospital.

(3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a class having priority to act is opposed by a member of the same class or a prior class under [section 10 11], the donee may not accept the

1 anatomical gift."

2 **Section 6.** Section 72-17-207, MCA, is amended to read:

3 **"72-17-207. Gift-authorizes-examination Examination --**
4 **autopsy -- liability. (1) A** An anatomical gift of all or
5 part of a body **authorizes any reasonable examination**
6 **necessary to assure medical acceptability of the gift for**
7 **the purposes intended.**

8 **(2) The provisions of this chapter are subject to the**
9 **laws of this state governing autopsies.**

10 **(3) A** hospital, physician, surgeon, coroner,
11 enucleator, technician, NURSE, or other person who acts in
12 accordance with this chapter or with the applicable
13 anatomical gift act of another state or attempts in good
14 faith to do so is not liable for that act in a civil action
15 or criminal proceeding.

16 **(4) An individual who makes an anatomical gift**
17 **pursuant to 72-17-201 or [section 10 11] and the**
18 **individual's estate are not liable for any injury or damage**
19 **that may result from the making or use of the anatomical**
20 **gift."**

21 **Section 7.** Section 72-17-208, MCA, is amended to read:

22 **"72-17-208. Delivery of document of gift to--expedite**
23 **procedures-----delivery--not--necessary--to--validity. (1)**
24 **Delivery of a document of gift during the donor's lifetime**
25 **is not required for the validity of an anatomical gift.**

1 **(2) If the an anatomical gift is made by-the-donor to**
2 **a specified designated donee, the will,--card,--or--other**
3 **document of gift, or an-executed a copy, thereof may be**
4 **delivered to the donee to expedite the appropriate**
5 **procedures immediately after death. Delivery---is---not**
6 **necessary-to-the-validity-of-the-gift:**

7 **(2) The will,--card,--or--other document of gift, or an**
8 **executed a copy, thereof may be deposited in any hospital,**
9 **bank---or---storage---facility procurement organization, or**
10 **registry office that accepts it for safekeeping or for**
11 **facilitation of procedures after death.**

12 **(3) On request of any an interested party person, upon**
13 **or after the donor's death, the person in possession shall**
14 **produce allow the interested person to examine or copy the**
15 **document for-examination of gift."**

16 **Section 8.** Section 72-17-301, MCA, is amended to read:

17 **"72-17-301. Rights and duties at death. (1) Rights of**
18 **a donee created by an anatomical gift are superior to rights**
19 **of others under 72-17-201(2) [SECTION 11(1){6}], except with**
20 **respect to autopsies. The A donee may accept or reject the**
21 **an anatomical gift. If the donee accepts a an anatomical**
22 **gift of the entire body, he the donee may, subject to the**
23 **terms of the gift, authorize may allow embalming and the use**
24 **of the body in funeral services. If the gift is of a part of**
25 **the body, the donee, upon the death of the donor and prior**

1 to before embalming, shall cause the part to be removed
 2 without unnecessary mutilation. After removal of the part,
 3 custody of the remainder of the body vests in the surviving
 4 ~~spouse, next of kin, or other persons~~ person under
 5 obligation to dispose of the body.

6 (2) The time of death ~~shall~~ must be determined by a
 7 physician or surgeon who ~~tends~~ attends the donor at his
 8 death or, if none, the physician or surgeon who certifies
 9 the death. ~~The~~ Neither the physician or surgeon who tends
 10 ATTENDS the donor at his death ~~or, if none, nor~~ the
 11 physician or surgeon who certifies determines the time of
 12 death ~~shall not~~ may participate in the procedures for
 13 removing or transplanting a part unless the document of gift
 14 designates a particular physician or surgeon pursuant to
 15 72-17-201(4).

16 (3) If there has been an anatomical gift, a technician
 17 may remove any donated parts and an enucleator may remove
 18 any donated eyes or parts of eyes after determination of
 19 death by a physician or surgeon."

20 **SECTION 9.** SECTION 72-17-311, MCA, IS AMENDED TO READ:

21 "72-17-311. Eye enucleations -- technicians
 22 enucleators -- qualifications. (1) Eye enucleations for
 23 purposes of anatomical gifts may be performed:

24 (a) by a licensed physician or surgeon; or

25 (b) by ~~a technician~~ an enucleator trained in eye

1 enucleation.

2 (2) An acceptable course in eye enucleation must
 3 include the anatomy and physiology of the eye, instruction
 4 in maintaining a sterile field during the enucleation
 5 procedure, and use of appropriate instruments and sterile
 6 procedures for removal and preservation of corneal tissue.

7 (3) Certification of satisfactory completion of a
 8 course in eye enucleation must be provided by the
 9 ophthalmologist who teaches the course. This certification
 10 qualifies ~~a technician~~ an enucleator to perform eye
 11 enucleations for a period of 3 years from the date of
 12 completion of the course."

13 **Section 10.** Section 72-17-312, MCA, is amended to
 14 read:

15 "72-17-312. Approval of eye banks. Any bank or storage
 16 facility that furnishes to the department written evidence
 17 of its membership and certification and reports and
 18 recommendations for future compliance, granted by the
 19 eyebank association of America, is approved for receipt and
 20 storage of eye tissue for the term of such membership and
 21 certification and is eligible during such term to be a donee
 22 of eye tissue pursuant to ~~72-17-202(1)(c)~~ 72-17-202."

23 **NEW SECTION. Section 11.** Making, revoking, and
 24 objecting to anatomical gifts by others. (1) Any member of
 25 the following classes of persons, in the order of priority

1 listed, may make an anatomical gift of all or a part of the
2 decedent's body for an authorized purpose, unless the
3 decedent, at the time of death, had made an unrevoked
4 refusal to make that anatomical gift:

- 5 (a) the spouse of the decedent;
- 6 (b) an adult son or daughter of the decedent;
- 7 (c) either parent of the decedent;
- 8 (d) an adult brother or sister of the decedent;
- 9 (e) a grandparent of the decedent; and
- 10 (f) a guardian of the person of the decedent at the
11 time of death.

12 (2) An anatomical gift may not be made by a person
13 listed in subsection (1) if:

- 14 (a) a person in a prior class is available at the time
15 of death to make an anatomical gift;
- 16 (b) the person proposing to make an anatomical gift
17 knows of a refusal or contrary indications by the decedent;
18 or
- 19 (c) the person proposing to make an anatomical gift
20 knows of an objection to making an anatomical gift by a
21 member of the person's class or a prior class.

22 (3) An anatomical gift by a person authorized under
23 subsection (1) must be made by:

- 24 (a) a document of gift signed by the person; or
- 25 (b) the person's telegraphic, recorded telephonic, or

1 other recorded message, or other form of communication from
2 the person that is contemporaneously reduced to writing and
3 signed by the recipient.

4 (4) An anatomical gift by a person authorized under
5 subsection (1) may be revoked by any member of the same or a
6 prior class if, before procedures have begun for the removal
7 of a part from the body of the decedent, the physician,
8 surgeon, technician, or enucleator removing the part knows
9 of the revocation.

10 (5) A failure to make an anatomical gift under
11 subsection (1) is not an objection to the making of an
12 anatomical gift.

13 **NEW SECTION. Section 12. Authorization by coroner or**
14 **local public health official.** (1) The coroner may release
15 and permit the removal of a part from a body within that
16 official's custody, for transplantation or therapy, if:

17 (a) the official has received a request for the part
18 from a hospital, physician, surgeon, or procurement
19 organization;

20 (b) the official has made a reasonable effort, taking
21 into account the useful life of the part, to locate and
22 examine the decedent's medical records and inform persons
23 listed in [section 10(1) 11(1)] of their option to make, or
24 object to making, an anatomical gift;

25 (c) the official does not know of a refusal or

1 contrary indication by the decedent or objection by a person
2 having priority to act as listed in [section 10(i) 11(1)];

3 (d) the removal will be by a physician, surgeon, or
4 technician; but in the case of eyes, by one of them or by an
5 enucleator;

6 (e) the removal will not interfere with any autopsy or
7 investigation;

8 (f) the removal will be in accordance with accepted
9 standards; and

10 (g) cosmetic restoration will be done, if appropriate.

11 (2) If the body is not within the custody of the
12 coroner, the local public health officer may release and
13 permit the removal of any part from a body in the local
14 public health officer's custody for transplantation or
15 therapy if the requirements of subsection (1) are met.

16 (3) An official releasing and permitting the removal
17 of a part shall maintain a permanent record of the name of
18 the decedent, the person making the request, the date and
19 purpose of the request, the part requested, and the person
20 to whom it was released.

21 **NEW SECTION. Section 13.** Routine inquiry and required
22 request -- search and notification. {i}--On--or--before
23 admission-to-a-hospital; or-as-soon-as-possible--thereafter;
24 a-person--designated-by-the-hospital-shall--ask--each-patient
25 who-is-at-least-18-years-of-age--"Are-you-an-organ-or-tissue

1 donor?"--if--the--answer--is--affirmative--the--person--shall
2 request--a--copy--of--the--document--of--gift;--if--the--answer--is
3 negative--or--there-is-no-answer--and--the--attending--physician
4 consents;--the--person--designated--shall--discuss--with--the
5 patient--the--option--to--make--or--refuse--to--make--an--anatomical
6 gift;--The--answer--to--the--question;--an--available--copy--of--any
7 document--of--gift--or--refusal--to--make--an--anatomical--gift;--and
8 any--other--relevant--information;--must--be--placed--in--the
9 patient's--medical--record;

10 (1) ON OR BEFORE ADMISSION TO A HOSPITAL OR AS SOON AS
11 POSSIBLE THEREAFTER, A PERSON DESIGNATED BY THE HOSPITAL
12 SHALL ASK EACH PATIENT WHO IS AT LEAST 18 YEARS OF AGE: "ARE
13 YOU AN ORGAN OR TISSUE DONOR?" THE DESIGNATED PERSON SHALL
14 THEN MAKE AVAILABLE TO A PERSON WHO ANSWERS IN THE NEGATIVE
15 BASIC INFORMATION REGARDING THE OPTION TO MAKE OR REFUSE TO
16 MAKE AN ANATOMICAL GIFT. THE QUESTION MUST BE ASKED AND THE
17 BASIC INFORMATION MUST BE MADE AVAILABLE WITH REASONABLE
18 DISCRETION AND SENSITIVITY TO THE CIRCUMSTANCES OF THE
19 PATIENT AND ARE NOT REQUIRED IF A GIFT IS NOT SUITABLE,
20 BASED UPON ACCEPTED MEDICAL STANDARDS, FOR A PURPOSE
21 SPECIFIED IN 72-17-202 OR IF THERE ARE MEDICAL OR EMOTIONAL
22 CONDITIONS UNDER WHICH THE QUESTION OR THE INFORMATION WOULD
23 CONTRIBUTE TO SEVERE EMOTIONAL DISTRESS. IF THE ANSWER IS
24 AFFIRMATIVE, THE PERSON SHALL REQUEST A COPY OF THE DOCUMENT
25 OF GIFT. THE ANSWER TO THE QUESTION, AN AVAILABLE COPY OF

1 ANY DOCUMENT OF GIFT OR REFUSAL TO MAKE AN ANATOMICAL GIFT,
 2 AND ANY OTHER RELEVANT INFORMATION MUST BE PLACED IN THE
 3 PATIENT'S MEDICAL RECORD.

4 ~~(2)~~(2) If, at or near the time of death of a
 5 patient, there is no medical record that the patient has
 6 made or refused to make an anatomical gift, the hospital
 7 administrator or a representative designated by the
 8 administrator shall discuss the option to make or refuse to
 9 make an anatomical gift and request the making of an
 10 anatomical gift pursuant to [section ~~10(1)~~ 11(1)]. The
 11 request must be made with reasonable discretion and
 12 sensitivity to the circumstances of the family. A request is
 13 not required if the gift ~~if~~ IS not suitable, based upon
 14 accepted medical standards, for a purpose specified in
 15 72-17-202 OR IF THERE ARE MEDICAL OR EMOTIONAL CONDITIONS
 16 UNDER WHICH THE REQUEST WOULD CONTRIBUTE TO SEVERE EMOTIONAL
 17 DISTRESS. An entry must be made in the medical record of the
 18 patient, stating the name and affiliation of the individual
 19 making the request and the name, response, and relationship
 20 to the patient of the person to whom the request was made.
 21 The department shall adopt rules to implement this
 22 subsection.

23 ~~(3)~~(2)(3) The following persons shall make a
 24 reasonable search for a document of gift or other
 25 information identifying the bearer as a donor or as an

1 individual who has refused to make an anatomical gift:

2 (a) a law enforcement officer, fireman, paramedic, or
 3 other emergency rescuer finding an individual whom the
 4 searcher believes is dead or near death; and

5 (b) a hospital, upon the admission of an individual at
 6 or near the time of death, if there is not immediately
 7 available any other source of that information.

8 ~~(4)~~(3)(4) If a document of gift or evidence of refusal
 9 to make an anatomical gift is located by the search required
 10 by subsection (3)(a) and the individual or body to whom it
 11 relates is taken to a hospital, the hospital must be
 12 notified of the contents and the document or other evidence
 13 must be sent to the hospital.

14 ~~(5)~~(4)(5) If, at or near the time of death of a
 15 patient, a hospital knows that an anatomical gift has been
 16 made pursuant to [section ~~10(1)~~ 11(1)] or a release and
 17 removal of a part has been permitted pursuant to [section ~~11~~
 18 12], or that a patient or an individual identified as in
 19 transit to the hospital is a donor, the hospital shall
 20 notify the donee if one is named and known to the hospital;
 21 if not, it shall notify an appropriate procurement
 22 organization. The hospital shall cooperate in the
 23 implementation of the anatomical gift or release and removal
 24 of a part.

25 ~~(6)~~(5)(6) A person who fails to discharge the duties

imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

~~NEW SECTION. Section 13. Delivery of document of gift. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.~~

~~(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.~~

NEW SECTION. Section 14. Coordination of procurement and use. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

NEW SECTION. Section 15. Sale or purchase of parts prohibited. (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation

or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a felony and upon conviction is subject to a fine not exceeding \$50,000 or imprisonment not exceeding 5 years, or both.

NEW SECTION. Section 16. Applicability. [This act] applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after October 1, 1989.

NEW SECTION. Section 17. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 18. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

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NEW SECTION. **Section 19.** **Repealer.** Sections

72-17-104, 72-17-203 through 72-17-206, 72-17-209,

72-17-211, and 72-17-212, MCA, are repealed.

4 NEW SECTION. **Section 20.** Codification instruction.
5 [Sections ~~10~~ 11 through 15] are intended to be codified as
6 an integral part of Title 72, chapter 17, and the provisions
7 of Title 72, chapter 17, apply to [sections ~~10~~ 11 through
8 15].

-End-

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

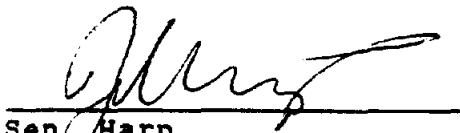
Renumber: subsequent subsections

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

SB 204
ccsb204.328

SENATE BILL NO. 204

INTRODUCED BY NORMAN, MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE UNIFORM ANATOMICAL GIFT ACT BY ADOPTING THE 1987 FORM OF THE ACT; AMENDING SECTIONS 50-5-212, 61-5-301, 72-17-102, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-301, 72-17-311, AND 72-17-312, MCA; REPEALING SECTIONS 72-17-104, 72-17-203 THROUGH 72-17-206, 72-17-209, 72-17-211, AND 72-17-212, MCA; AND PROVIDING AN APPLICABILITY PROVISION."

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

Section 1. Section 50-5-212, MCA, is amended to read:

"50-5-212. Organ procurement program required. The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in ~~72-17-211~~ [section 12 13]; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1)."

Section 2. Section 61-5-301, MCA, is amended to read:

"61-5-301. Indication on driver's license of intent to make anatomical gift. (1) The department of justice shall provide on each driver's license a space for indicating when the licensee has executed a document under ~~72-17-204~~ 72-17-201 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally whether he wishes to make an anatomical gift.

(3) Each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(4) The department shall issue to every applicant who indicates such an intent a statement which, when signed by

the licensee in the manner prescribed in 72-17-204 72-17-201, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(5) The department shall also furnish the licensee a means of revoking the document of gift upon the license."

Section 3. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. As used in this chapter the following definitions apply: (1) "Bank-or-storage-facility" means a facility for storage of human bodies or parts thereof, operated by or under the supervision of a person who qualifies as a donee under subsection (1)(a) or (1)(b) of 72-17-202 "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(5) "Donor" means an individual who makes a gift of all or part of his the individual's body.

(5) "Eyebank--association--of--America"--means--the organization--nationally--recognized--by--that--name,--with headquarters--in--Houston,--Texas,--that--surveys--banks--or storage--facilities--for--the--storage--of--eye--tissue--upon--their requests--and--grants--membership--and--certification--status--to any--such--bank--or--storage--facility--that--it--finds--meets--its standards--and--requirements.

(6) "Enucleator" means an individual who is licensed by the state board of medical examiners CERTIFIED PURSUANT TO 72-17-311 to remove or process eyes or parts of eyes.

(7) "Hospital" means a hospital facility licensed, accredited, or approved under the laws of any state; includes a hospital or a facility operated as a hospital by the United States government, a state, or a subdivision thereof, although not required to be licensed under of a state laws.

(7) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(8) "OPHTHALMOLOGIST" MEANS A LICENSED PHYSICIAN OR SURGEON WHO SPECIALIZES IN THE TREATMENT OR CORRECTION OF DISEASES OF THE EYE.

(8) (9) "Parts" means organs, tissues, eyes, bones, arteries, blood or other fluids, and any other portions Part" means an organ, tissue, eye, bone, artery, blood,

fluid, or other portion of a human body.

{9}{10} "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, or association, or any other legal or commercial entity.

{10}{11} "Physician" or "surgeon" means a physician--or surgeon an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

{11}{12} "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

{11}{12}{13} "State" includes--any means a state, district,--commonwealth, territory, insular or possession, and any other area subject to the legislative--authority of the United States, of America the District of Columbia, or the Commonwealth of Puerto Rico.

{12}{13}{14} "Technician trained--in--eye--enucleation" means an individual who has--satisfactorily--completed a course in eye enucleation taught by--an--ophthalmologist is licensed CERTIFIED by the state board of medical examiners to remove or process a part."

Section 4. Section 72-17-201, MCA, is amended to read:

"72-17-201. Persons who may make gift---priorities---

donee not to accept over objection of--prior--right Making, amending, revoking, and refusing to make anatomical gifts by an individual. (1) Any An individual of sound mind and who is at least 18 years of age or more may give all or any part of his body for any purpose specified:

(a) make an anatomical gift for any of the purposes stated in 72-17-202; the gift to take effect upon death

(b) limit an anatomical gift to one or more of those purposes; or

(c) refuse to make an anatomical gift.

{2}--Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in 72-17-202:

{a}--the spouse;

{b}--an adult son or daughter;

{c}--either parent;

{d}--an adult brother or sister;

{e}--a guardian of the person of the decedent at the time of his death;

{3}--The persons authorized by subsection {2} may make the gift after or immediately before death;

~~(4) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.~~

(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid

for testamentary purposes, the validity of the anatomical gift is unaffected.

(6) A donor may amend or revoke an anatomical gift not made by will only by:

(a) a signed statement;

(b) an oral statement made in the presence of two individuals;

(c) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or

(d) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6).

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.

(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(i) a writing signed in the same manner as a document of gift;

(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or

1 (iii) any other writing used to identify the individual
2 as refusing to make an anatomical gift.

3 (b) During a terminal illness or injury, the refusal
4 may be an oral statement or other form of communication.

5 (10) In the absence of contrary indications by the
6 donor, an anatomical gift of a part is neither a refusal to
7 give other parts nor a limitation on an anatomical gift
8 under [section 10 11] or on a removal or release of other
9 parts under [section 11 12].

10 (11) In the absence of contrary indications by the
11 donor, a revocation or amendment of an anatomical gift is
12 not a refusal to make another anatomical gift. If the donor
13 intends a revocation to be a refusal to make an anatomical
14 gift, the donor shall make the refusal pursuant to
15 subsection (9)."

16 **Section 5.** Section 72-17-202, MCA, is amended to read:

17 "72-17-202. Persons who may become donees --
18 permissible purposes of gift for which anatomical gifts may
19 be made ----nonliability. (1) The following persons may
20 become donees of anatomical gifts of bodies or parts thereof
21 for the purposes stated:

22 (a) any a hospital, surgeon, or physician, or
23 procurement organization for medical or dental education,
24 research, advancement of medical or dental science, therapy,
25 or transplantation;

1 (b) any an accredited medical or dental school,
2 college, or university for education, research, advancement
3 of medical or dental science, ~~or therapy; or~~

4 (c) ~~any bank or storage facility licensed, accredited,~~
5 ~~or approved under the laws of any state for medical or~~
6 ~~dental education, research, advancement of medical or dental~~
7 ~~science, therapy, or transplantation, or~~

8 ~~(d) any specified a designated individual for therapy~~
9 ~~or transplantation needed by him that individual.~~

10 ~~(2) A physician, surgeon, technician trained in eye~~
11 ~~enucleation, hospital, bank or storage facility, or donee~~
12 ~~acting in good faith compliance with the provisions of this~~
13 ~~chapter is not liable in a civil action to any claimant who~~
14 ~~alleges that the claimant's authorization for use of the~~
15 ~~body or part was required;~~

16 (2) An anatomical gift may be made to a designated
17 donee or without designating a donee. If a donee is not
18 designated or if the donee is not available or rejects the
19 anatomical gift, the anatomical gift may be accepted by a
20 hospital.

21 (3) If the donee knows of the decedent's refusal or
22 contrary indications to make an anatomical gift or that an
23 anatomical gift by a member of a class having priority to
24 act is opposed by a member of the same class or a prior
25 class under [section 10(1) 11], the donee may not accept the

1 anatomical gift."

2 **Section 6.** Section 72-17-207, MCA, is amended to read:

3 ~~"72-17-207. Gift authorizes examination Examination --~~
4 ~~autopsy -- liability. (1) A An anatomical gift of all or~~
5 ~~part of a body~~ authorizes any reasonable examination
6 necessary to assure medical acceptability of the gift for
7 the purposes intended.

8 (2) The provisions of this chapter are subject to the
9 laws of this state governing autopsies.

10 (3) A hospital, physician, surgeon, coroner,
11 enucleator, technician, NHRSE, NURSE, or other person who
12 acts in accordance with this chapter or with the applicable
13 anatomical gift act of another state or attempts in good
14 faith to do so is not liable for that act in a civil action
15 or criminal proceeding.

16 (4) An individual who makes an anatomical gift
17 pursuant to 72-17-201 or [section 10 11] and the
18 individual's estate are not liable for any injury or damage
19 that may result from the making or use of the anatomical
20 gift."

21 **Section 7.** Section 72-17-208, MCA, is amended to read:

22 ~~"72-17-208. Delivery of document of gift to expedite~~
23 ~~procedures delivery not necessary to validity. (1)~~
24 Delivery of a document of gift during the donor's lifetime
25 is not required for the validity of an anatomical gift.

1 (2) If the an anatomical gift is made by the donor to
2 a specified designated donee, the will, card, or other
3 document of gift, or an executed a copy, thereof may be
4 delivered to the donee to expedite the appropriate
5 procedures immediately after death. Delivery is not
6 necessary to the validity of the gift.

7 (2) The will, card, or other document of gift, or an
8 executed a copy, thereof may be deposited in any hospital,
9 bank or storage facility procurement organization, or
10 registry office that accepts it for safekeeping or for
11 facilitation of procedures after death.

12 (3) On request of any an interested party person, upon
13 or after the donor's death, the person in possession shall
14 produce allow the interested person to examine or copy the
15 document for examination of gift."

16 **Section 8.** Section 72-17-301, MCA, is amended to read:

17 ~~"72-17-301. Rights and duties at death. (1) Rights of~~
18 a donee created by an anatomical gift are superior to rights
19 of others under 72-17-201(2) [SECTION 11(1)(C)], except with
20 respect to autopsies. The A donee may accept or reject the
21 an anatomical gift. If the donee accepts a an anatomical
22 gift of the entire body, he the donee may, subject to the
23 terms of the gift, authorize may allow embalming and the use
24 of the body in funeral services. If the gift is of a part of
25 the body, the donee, upon the death of the donor and prior

to before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, ~~next of kin, or other persons~~ person under obligation to dispose of the body.

(2) The time of death ~~shall~~ must be determined by a physician or surgeon who ~~tends~~ attends the donor at his death or, if none, the physician or surgeon who certifies the death. ~~The~~ Neither the physician or surgeon who tends ATTENDS the donor at his death ~~or, if none, nor the~~ physician or surgeon who ~~certifies~~ determines the time of death ~~shall not~~ may participate in the procedures for removing or transplanting a part unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201(4).

(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon."

SECTION 9. SECTION 72-17-311, MCA, IS AMENDED TO READ:

"72-17-311. Eye enucleations -- technicians enucleators -- qualifications. (1) Eye enucleations for purposes of anatomical gifts may be performed:

- (a) by a licensed physician or surgeon; or
- (b) by ~~a technician~~ an enucleator trained in eye

enucleation.

(2) An acceptable course in eye enucleation must include the anatomy and physiology of the eye, instruction in maintaining a sterile field during the enucleation procedure, and use of appropriate instruments and sterile procedures for removal and preservation of corneal tissue.

(3) Certification of satisfactory completion of a course in eye enucleation must be provided by the ophthalmologist who teaches the course. This certification qualifies ~~a technician~~ an enucleator to perform eye enucleations for a period of 3 years from the date of completion of the course."

Section 10. Section 72-17-312, MCA, is amended to read:

"72-17-312. Approval of eye banks. Any bank or storage facility that furnishes to the department written evidence of its membership and certification and reports and recommendations for future compliance, granted by the eyebank association of America, is approved for receipt and storage of eye tissue for the term of such membership and certification and is eligible during such term to be a donee of eye tissue pursuant to ~~72-17-202(1)(c)~~ 72-17-202."

NEW SECTION. Section 11. Making, revoking, and objecting to anatomical gifts by others. (1) Any member of the following classes of persons, in the order of priority

1 listed, may make an anatomical gift of all or a part of the
 2 decedent's body for an authorized purpose, unless the
 3 decedent, at the time of death, had made an unrevoked
 4 refusal to make that anatomical gift:

- 5 (a) the spouse of the decedent;
- 6 (b) an adult son or daughter of the decedent;
- 7 (c) either parent of the decedent;
- 8 (d) an adult brother or sister of the decedent;
- 9 (e) a grandparent of the decedent; and
- 10 (f) a guardian of the person of the decedent at the
 11 time of death.

12 (2) An anatomical gift may not be made by a person
 13 listed in subsection (1) if:

- 14 (a) a person in a prior class is available at the time
 15 of death to make an anatomical gift;
- 16 (b) the person proposing to make an anatomical gift
 17 knows of a refusal or contrary indications by the decedent;
 18 or
- 19 (c) the person proposing to make an anatomical gift
 20 knows of an objection to making an anatomical gift by a
 21 member of the person's class or a prior class.

22 (3) An anatomical gift by a person authorized under
 23 subsection (1) must be made by:

- 24 (a) a document of gift signed by the person; or
- 25 (b) the person's telegraphic, recorded telephonic, or

1 other recorded message, or other form of communication from
 2 the person that is contemporaneously reduced to writing and
 3 signed by the recipient.

4 (4) An anatomical gift by a person authorized under
 5 subsection (1) may be revoked by any member of the same or a
 6 prior class if, before procedures have begun for the removal
 7 of a part from the body of the decedent, the physician,
 8 surgeon, technician, or enucleator removing the part knows
 9 of the revocation.

10 (5) A failure to make an anatomical gift under
 11 subsection (1) is not an objection to the making of an
 12 anatomical gift.

13 NEW SECTION. **Section 12. Authorization by coroner or**
 14 **local public health official.** (1) The coroner may release
 15 and permit the removal of a part from a body within that
 16 official's custody, for transplantation or therapy, if:

17 (a) the official has received a request for the part
 18 from a hospital, physician, surgeon, or procurement
 19 organization;

20 (b) the official has made a reasonable effort, taking
 21 into account the useful life of the part, to locate and
 22 examine the decedent's medical records and inform persons
 23 listed in [section ~~10(1)~~ 11(1)] of their option to make, or
 24 object to making, an anatomical gift;

25 (c) the official does not know of a refusal or

contrary indication by the decedent or objection by a person having priority to act as listed in [section 10(1) 11(1)];

(d) the removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;

(e) the removal will not interfere with any autopsy or investigation;

(f) the removal will be in accordance with accepted standards; and

(g) cosmetic restoration will be done, if appropriate.

(2) If the body is not within the custody of the coroner, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation or therapy if the requirements of subsection (1) are met.

(3) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

NEW SECTION. Section 13. Routine inquiry and required request -- search and notification. (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?" If the answer is affirmative, the person shall request a copy of the document of gift. If the answer is negative or there is no answer and the attending physician consents, the person designated shall discuss with the patient the option to make or refuse to make an anatomical 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.

(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 are 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.~~

~~(2)(1)(2)(1)~~ If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to [section ~~10(1)~~ 11(1)]. The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift ~~if~~ 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 REQUEST WOULD CONTRIBUTE TO SEVERE EMOTIONAL DISTRESS. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request and the name, response, and relationship to the patient of the person to whom the request was made. The department shall adopt rules to implement this subsection.

~~(3)(2)(3)(2)~~ The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an

individual who has refused to make an anatomical gift:

(a) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes is dead or near death; and

(b) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

~~(4)(3)(4)(3)~~ If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (3)(a) and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

~~(5)(4)(5)(4)~~ If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to [section ~~10(1)~~ 11(1)] or a release and removal of a part has been permitted pursuant to [section ~~11~~ 12], or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

~~(6)(5)(6)(5)~~ A person who fails to discharge the

duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

~~NEW SECTION. Section 13. Delivery of document of gift. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.~~

~~(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift.~~

NEW SECTION. Section 14. Coordination of procurement and use. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

NEW SECTION. Section 15. Sale or purchase of parts prohibited. (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation

or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a felony and upon conviction is subject to a fine not exceeding \$50,000 or imprisonment not exceeding 5 years, or both.

NEW SECTION. Section 16. Applicability. [This act] applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after October 1, 1989.

NEW SECTION. Section 17. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 18. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

SB 0204/04

1 NEW SECTION. **Section 19.** Repealer. Sections
2 72-17-104, 72-17-203 through 72-17-206, 72-17-209,
3 72-17-211, and 72-17-212, MCA, are repealed.

4 NEW SECTION. **Section 20.** Codification instruction.
5 [Sections ~~10~~ 11 through 15] are intended to be codified as
6 an integral part of Title 72, chapter 17, and the provisions
7 of Title 72, chapter 17, apply to [sections ~~10~~ 11 through
8 15].

-End-