

HOUSE BILL NO. 557  
INTRODUCED BY J. ANDERSEN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS RELATING TO ANATOMICAL GIFTS; PROVIDING FOR THE DEVELOPMENT OF AN ORGAN DONATION REGISTRY SYSTEM; PROVIDING FOR THE TRANSFER OF ORGAN DONOR INFORMATION FROM THE DEPARTMENT OF JUSTICE TO THE FEDERALLY DESIGNATED ORGAN PROCUREMENT ORGANIZATION; LIMITING USES OF ORGAN DONOR INFORMATION; ALLOWING THE DEPARTMENT OF JUSTICE TO RECOVER COSTS; CLARIFYING THAT THE DONOR'S WISHES ARE PARAMOUNT; AND AMENDING SECTIONS 61-5-301 AND 72-17-201, MCA."

WHEREAS, more than 80,000 people are currently waiting for life-saving organ transplants on the national transplant waiting list, of which 1,200 persons live in our region, and 17 people die each day as a result of the shortage of donated organs.

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

**NEW SECTION. Section 1. Legislative findings.** (1) The legislature finds that the use of anatomical gifts, including the donation of organs or tissue, for the purpose of transplantation is of great interest to the citizens of Montana and may save or prolong the life or improve the health of extremely ill and dying persons. The creation of a statewide organ and tissue donation registry is crucial to facilitate timely and successful organ and tissue procurement.

(2) The legislature further finds that continuing education of the existence and maintenance of a statewide organ and tissue donation registry is in the best interest of the people of Montana.

**NEW SECTION. Section 2. Statewide organ and tissue donation registry.** (1) The department of justice shall electronically transfer to the federally designated organ procurement organization all information that appears on the front of a driver's license, including the name, gender, date of birth, and most recent address of any person who obtains a driver's license and who volunteers to donate organs or tissue upon death, as provided in 61-5-301. The department of justice may charge actual costs for the first transfer of information, as provided in subsection (5). However, all subsequent electronic transfers of donor information must be at no charge to the

federally designated organ procurement organization.

(2) Information obtained by the federally designated organ procurement organization must be used for the purpose of establishing a statewide organ and tissue donation registry accessible to in-state, recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Montana resident is a donor of an anatomical gift and is not located in the state at the time of death or immediately before the death of the donor.

(3) An organ or tissue donation organization may not obtain information from the organ and tissue donation registry for the purpose of fundraising. Organ and tissue donation registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donation registry information may be made by the organ procurement organization to a recognized, in-state procurement agency for other tissue recovery or to an out-of-state, federally designated organ procurement organization.

(4) The federally designated organ procurement organization may acquire donor information from sources other than the department of justice.

(5) All reasonable costs associated with the creation and maintenance of the organ and tissue donation registry, as determined by the department of justice, must be paid by the organ and tissue procurement organizations. Any money collected by the department of justice must be deposited in an account in the state special revenue fund established by the department of justice for the purpose of the payment of reasonable costs associated with the development and maintenance of the organ and tissue donation registry and necessary for the initial installation and setup for electronic transfer of the donor information.

(6) An individual does not need to participate in the organ and tissue donation registry to be a donor of organs or tissue. The registry is intended to facilitate organ and tissue donation and not inhibit persons from being donors upon death.

**Section 3.** 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 72-17-201 of intent to make a gift of all or part of ~~his~~ the driver's 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~~ if the applicant wishes to make an anatomical gift.

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

(4) The department shall issue to ~~every~~ each applicant who indicates ~~such~~ an intent to make an anatomical gift a statement ~~which~~ that, when signed by the licensee in the manner prescribed in 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~~ the donor's driver's license.

~~(5) The department shall also furnish the licensee a means of revoking the document of gift upon the license. The department shall electronically transfer the information of all persons who volunteer, upon application for a driver's license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in [sections 1 and 2] and any subsequent changes to the applicant's donor status."~~

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

**"72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by an individual.**

(1) An individual who is at least 18 years of age may:

(a) make an anatomical gift for any of the purposes stated in 72-17-202; or

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

~~(c) refuse to make an anatomical 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. A gift made in accordance with this section is sufficient legal authority for procurement without additional authority from the donor, donor's family, or estate.

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

~~(a)~~(i) a signed statement;

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

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

or

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

(b) A donor shall notify the federally designated organ procurement organization of the destruction, cancellation, or mutilation of the document for the purpose of removing the person's name from the organ and tissue donation registry created in [sections 1 and 2].

(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. The donor's family or health care provider may not refuse to honor the gift or thwart the procurement of the donation.

(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 72-17-214 or on a removal or release of other parts under 72-17-215.

(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)."

NEW SECTION. Section 5. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 72, chapter 17, and the provisions of Title 72, chapter 17, apply to [sections 1 and 2].

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