

SENATE BILL NO. 287

INTRODUCED BY WEINBERG, ARNTZEN, JOPEK, HARRINGTON, O'HARA, WILLIAMS, MURPHY,
LEWIS, BECKER, WANZENRIED, COBB, KAUFMANN, SONJU, LIND, NOONAN

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE PROVISIONS OF THE REVISED UNIFORM ANATOMICAL GIFT ACT TO CLARIFY THE PROCEDURES FOR MAKING AN ANATOMICAL GIFT AND AMENDING OR REVOKING A DOCUMENT OF GIFT; ALLOWING CERTAIN MINORS TO MAKE ANATOMICAL GIFTS; CLARIFYING THE PURPOSE OF CERTAIN ANATOMICAL GIFTS; ESTABLISHING PROCEDURES FOR ANATOMICAL GIFTS WHEN A DEATH IS UNDER INVESTIGATION; AMENDING SECTIONS 46-4-103, 50-9-105, 50-10-103, 72-17-101, 72-17-102, 72-17-108, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-213, 72-17-214, AND 72-17-301, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 46-4-103, MCA, is amended to read:

"46-4-103. Autopsy -- when conducted, scope. (1) If in the opinion of the coroner an autopsy is advisable, ~~he~~ the coroner shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general. In ordering an autopsy the coroner, county attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct an autopsy includes the right to retain specimens the medical examiner performing the autopsy considers necessary.

(3) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy, investigation, or inquiry is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for postmortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

(5) Autopsies performed under this section on a decedent whose death is under investigation and who

has made an anatomical gift or on whose behalf an anatomical gift has been made must be performed in accordance with [sections 14 and 15]."

Section 2. Section 50-9-105, MCA, is amended to read:

"50-9-105. When declaration operative. (1) A declaration becomes operative when:

(a) it is communicated to the attending physician or attending advanced practice registered nurse; and
(b) the declarant is determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) ~~When~~ Except as provided in [section 13], when the declaration becomes operative, the attending physician or attending advanced practice registered nurse and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203."

Section 3. Section 50-10-103, MCA, is amended to read:

"50-10-103. Adherence to do not resuscitate protocol -- transfer of patients. (1) ~~Emergency~~ Except as provided in [section 13], emergency medical services personnel, other than physicians or advanced practice registered nurses, shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician or an advanced practice registered nurse, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician, an attending advanced practice registered nurse, or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician or advanced practice registered nurse or to a health care facility in which the do not resuscitate protocol will be followed."

Section 4. Section 72-17-101, MCA, is amended to read:

"72-17-101. Short title. This chapter may be cited as the "Revised Uniform Anatomical Gift Act"."

Section 5. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Agent" means an individual:

(a) authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(b) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(1)(3) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death for the purposes of transplantation, therapy, research, or education.

(2)(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift and includes a stillborn infant or fetus.

(3)(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) (a) "Disinterested witness" means a witness other than:

(i) the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift; or

(ii) another adult who exhibited special care and concern for the individual.

(b) The term does not include a person to which an anatomical gift could pass under 72-17-202.

(4)(7) "Document of gift" means any of the following methods used to make an anatomical gift: a card; a statement attached to or imprinted on a ~~motor vehicle operator's~~ driver's license, identification card, or donor registry; a will; or other writing; ~~or a witnessed oral statement used to make an anatomical gift.~~

(5)(8) "Donor" means an individual who makes a gift of all or part of the individual's body whose body or part is the subject of an anatomical gift.

(9) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(10) "Driver's license" means a license or permit issued by ~~the department of justice~~ ANY STATE OR FEDERAL AUTHORITY to operate a vehicle, whether or not conditions are attached to the license or permit.

(6)(11) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.

(12) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(13) (a) "Guardian" means a person appointed by a court to make decisions regarding the support, care,

education, health, and welfare of an individual.

(b) The term does not include a guardian ad litem.

~~(7)~~(14) "Hospital" means a facility licensed, accredited, or approved under the laws of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(15) "Identification card" means an identification card issued by the department of justice.

(16) "Know" means to have actual knowledge.

(17) "Minor" means an individual who is under 18 years of age.

~~(8)~~(18) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(19) "Organ procurement organization" means a person designated by the secretary of the United States department of health and human services as an organ procurement organization.

(20) "Parent" means a parent whose parental rights have not been terminated.

~~(9)~~(21) (a) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(b) The term does not include the whole body.

~~(40)~~(22) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, limited liability company, association, public corporation, instrumentality, or any other legal or commercial entity.

~~(41)~~(23) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

~~(42)~~(24) "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~~ an eye bank, organ procurement organization, or tissue bank.

(25) (a) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education.

(b) The term does not include an individual who has made a refusal of an anatomical gift.

(26) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(27) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(29) "Refusal" means a record created under 72-17-201 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(30) "Sign" means, with the present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(13)(31) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(14)(32) "Technician" means an individual who is certified by the state board of medical examiners to remove or process a part.

(33) "Tissue" means a portion of the human body other than an organ, an eye, or blood unless the blood is donated for the purpose of research or education.

(34) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(35) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients."

Section 6. Section 72-17-108, MCA, is amended to read:

"72-17-108. Coordination of procurement and use. Each hospital in this state, ~~after consultation with other hospitals and procurement organizations;~~ shall establish agreements or affiliations with procurement organizations for coordination of procurement and use of ~~human bodies and parts~~ anatomical gifts."

Section 7. Section 72-17-201, MCA, is amended to read:

"72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by individual. (1) ~~An individual who is at least 18 years of age may:~~ anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in this section by:

(a) ~~make an anatomical gift for any of the purposes stated in 72-17-202;~~ or the donor, if the donor is an adult or if the donor is a minor and is:

(i) emancipated; or

(ii) authorized under state law to apply for a driver's license because the donor is at least 16 15 years of age;

(b) limit an anatomical gift to one or more of those purposes: an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(c) a parent of the donor, if the donor is an unemancipated minor; or

(d) the donor's guardian.

(2) An A donor may make 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 signed.

(a) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(b) by a statement contained in a will;

(c) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(d) as provided in subsection (3).

(3) A donor or other person authorized to make an anatomical gift under subsection (1) may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign the record, the record may be signed by another individual at the direction of the donor or the other person and must:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person; and

(b) state that it has been signed and witnessed as provided in subsection (3)(a).

(3)(4) 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 a driver's license or identification card issued to a donor does not invalidate the anatomical gift.

(4)(5) 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)(6)~~ An anatomical gift by will takes effect upon the donor's death of the testator, whether or not the will is probated. If, after the ~~testator's~~ donor's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected. ~~A~~ An anatomical gift made in accordance with this section is sufficient legal authority for procurement without additional authority from the donor or the donor's family or estate.

~~(6)(7) (a)~~ Except as provided in subsection (17) and subject to subsection (14), a donor or other person authorized to make an anatomical gift under subsection (1) may amend or revoke an anatomical gift not made by will only by:

~~(i) a signed statement;~~

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

(a) a record signed by:

(i) the donor or the other person; or

(ii) subject to subsection (8), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign;

~~(iii)(b)~~ any form of communication during a terminal illness or injury addressed to a physician or surgeon at least two adults, one of whom is a disinterested witness; or

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

(d) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency; or

(e) destroying or canceling the document of gift or portion of the document of gift used to make the anatomical gift with the intent to revoke the anatomical gift.

(8) A record signed pursuant to subsection (7)(a)(ii) must:

(a) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(b) state that it has been signed and witnessed as provided in subsection (8)(a).

~~(b)(9)~~ 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 72-17-105 and 72-17-106.

~~(7)(10)~~ The donor of an anatomical gift made by will may amend or revoke the anatomical gift in the manner provided for amendment or revocation of wills or as provided in subsection ~~(6)~~ (7).

~~(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)(11)~~ (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~~ driver's license or identification card; ~~or~~

(iii) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

~~(iii)(iv)~~ (iv) 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 addressed to at least two adults, at least one of whom is a disinterested witness.

(12) An individual who has made a refusal may amend or revoke a refusal;

(a) in the manner provided in subsection (11) for making a refusal;

(b) by subsequently making an anatomical gift pursuant to subsection (2) or (3) that is inconsistent with the refusal; or

(c) by destroying or canceling the record evidencing the refusal or the portion of the record used to make the refusal with the intent to revoke the refusal.

(13) Except as otherwise provided in subsection (17) and subject to subsection (15), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under subsection (2) or (3) or an amendment to an anatomical gift under subsection (7). The donor's family or health care provider may not refuse to honor the anatomical gift or thwart the procurement of the donation.

(14) Except as otherwise provided in subsection (18), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or a part bars all other persons from making an anatomical gift of the individual's body or a part.

~~(10)(15)~~ In the absence of an express, contrary indications indication by the donor or other person authorized under this section to make an anatomical gift, an anatomical gift of a part for one or more of the purposes set forth in subsection (1) 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)(16)~~ In the absence of contrary indications by the donor, a donor's revocation or amendment of an

anatomical gift of the donor's body or part is not a refusal to make another anatomical gift and does not bar another person specified in this section or 72-17-214 from making an anatomical gift of the donor's body or part.

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)~~ (11).

(17) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(18) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal."

Section 8. Section 72-17-202, MCA, is amended to read:

"72-17-202. Persons who may become donees -- purposes for which anatomical gifts may be made. (1) The following persons may become donees of anatomical gifts for the purposes stated if named in the document of gift:

(a) a hospital, surgeon, physician, or procurement organization; accredited medical school, dental school, college, or university; or other appropriate person for medical or dental education; or research; advancement of medical or dental science, therapy, or transplantation;

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

~~—— (c) a designated individual for therapy or transplantation needed by that individual.~~

(b) subject to subsection (2), an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(c) an eye bank or tissue bank.

(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. If an anatomical gift to an individual under subsection (1)(b) cannot be transplanted into the individual, the part passes in accordance with subsection (7) in the absence of an express, contrary indication by the person making the anatomical gift.

(3) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the

appropriate eye bank.

(b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(c) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate organ procurement organization.

(4) For the purpose of subsection (3), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the anatomical gift must be used for transplantation or therapy, if suitable. If the anatomical gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(5) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (1) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7).

(6) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor" or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy and the gift passes in accordance with subsection (7).

(7) For purposes of subsections (2), (5), and (6), the following rules apply:

(a) If the part is an eye, the gift passes to the appropriate eye bank.

(b) If the part is tissue, the gift passes to the appropriate tissue bank.

(c) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(8) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (1)(b), passes to the organ procurement organization as custodian of the organ.

(9) If an anatomical gift does not pass pursuant to subsections (1) through (8) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

~~(9)~~(10) 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 72-17-214, the donee may not accept the anatomical gift. For the purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is considered

to know of any amendment or revocation of the anatomical gift or any refusal to make an anatomical gift on the same document of gift.

(11) Except as otherwise provided in subsection (1)(b), nothing in this section affects the allocation of organs for transplantation or therapy."

Section 9. Section 72-17-207, MCA, is amended to read:

"72-17-207. Examination -- autopsy -- liability. (1) An anatomical gift authorizes any reasonable examination necessary to ~~assure~~ ensure medical acceptability of the gift for the purposes intended. Unless prohibited by law other than this chapter, an examination may include an examination of all medical and dental records of the donor or prospective donor.

(2) ~~The~~ Except as provided in [sections 14 and 15], the provisions of this chapter are subject to the laws of this state governing autopsies.

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

(4) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in 72-17-214(1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), or (1)(h) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

~~(4)(5)~~ (5) An individual who makes an anatomical gift pursuant to 72-17-201 or 72-17-214 and the individual's estate are not liable for any injury or damage that may result from the making or use of the anatomical gift."

Section 10. Section 72-17-208, MCA, is amended to read:

"72-17-208. ~~Delivery of document~~ Document of gift -- delivery -- validity. (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~~ A document of gift or a refusal to make an anatomical 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 or the refusal to make an anatomical gift.

(3) A document of gift is valid if executed in accordance with:

(a) this chapter;

(b) the laws of the state or country where it was executed; or

(c) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(4) If a document of gift is valid under this section, the laws of this state govern the interpretation of the document of gift.

(5) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked."

Section 11. Section 72-17-213, MCA, is amended to read:

"72-17-213. Routine inquiry and required request -- search and notification. (1) ~~If, at~~ At or near the time of death of a hospitalized 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 72-17-214(1)~~ notify the appropriate procurement organization AND, IF THE REASON FOR DEATH FALLS UNDER 46-4-122, THE CORONER WITH JURISDICTION of the imminent or actual death of the patient and, in collaboration with the procurement organization, ensure that a trained designated requestor is readily available to discuss donation opportunities with the legal next of kin A PERSON AUTHORIZED UNDER 72-17-214 TO MAKE AN ANATOMICAL GIFT. The person designated must be a representative of a procurement organization or a person who has had training provided by or approved by a procurement organization. ~~The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the 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 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:~~

(2) When a hospital refers an individual at or near death to a procurement organization, the organization:

(a) shall make a reasonable search of the records of the department of justice and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual

has made an anatomical gift:

(b) must be allowed reasonable access to information in the records of the department of justice to ascertain whether an individual at or near death is a donor; and

(c) may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

~~(2)~~(3) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death 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~~ firefighter, paramedic, or other emergency rescuer finding ~~an~~ the individual ~~whom the searcher believes is dead or near death~~; and

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

~~(3)~~(4) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection ~~(2)(a)~~ (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.

~~(4)~~(5) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to 72-17-214(1) or a release and removal of a part has been permitted pursuant to 72-17-215 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.

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

(7) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(8) Upon referral by a hospital under subsection (2), a procurement organization shall make a reasonable search for any person listed in 72-17-214 having priority to make an anatomical gift on behalf of a prospective

donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information."

Section 12. Section 72-17-214, MCA, is amended to read:

"72-17-214. Making, revoking, and objecting to anatomical gifts by others. (1) Any Subject to subsections (2) and (3), any member of the following classes of persons who is reasonably available, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for ~~an authorized~~ a purpose authorized in 72-17-201(1), unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift as provided for in 72-17-201:

(a) an agent of the decedent at the time of death who could have made an anatomical gift under 72-17-201 immediately before the decedent's death;

~~(a)~~(b) the spouse of the decedent;

~~(b)~~(c) an adult son or daughter of the decedent;

~~(c)~~(d) either parent of the decedent;

~~(d)~~(e) an adult brother or sister of the decedent;

(f) adult grandchildren of the decedent;

~~(e)~~(g) a grandparent of the decedent; ~~and~~

~~(h) an adult who exhibited special care and concern for the decedent;~~

~~(f)~~(i)(H) a guardian of the person of the decedent at the time of death; and

~~(i)~~(l) any other person having the authority to dispose of the decedent's body.

(2) If there is more than one member of a class listed in subsection (1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), or (1)(i) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift can pass under 72-17-202 knows of an objection by another member of the class. If an objection is known, the anatomical gift may be made only by a majority of the members of the class who are reasonably available.

~~(2)~~(3) An anatomical gift may not be made by a person listed in subsection (1) if:

(a) a person in a prior class is reasonably available at the time of death to make or to object to the making of an anatomical gift; or

(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)~~(4) 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 other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(5) Subject to subsection (6), an anatomical gift by a person authorized under subsection (1) may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift may be:

(a) amended only if a majority of the reasonably available members agree to the amending of the gift;
or

(b) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

~~(4)~~(6) ~~An anatomical gift by a person authorized under subsection (1) may be revoked by any member of the same or a prior class~~ A revocation made under subsection (5) is effective only if, before procedures have begun ~~an incision has been made for the removal of a part from the body of the decedent or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, physician, surgeon, technician, or enucleator removing the part knows of the revocation.~~

~~(5)~~(7) A failure to make an anatomical gift under subsection (1) is not an objection to the making of an anatomical gift."

NEW SECTION. Section 13. Anatomical gifts -- advance health care directive. (1) For the purposes of this section, the following definitions apply:

(a) "Advance health care directive" means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(b) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(c) "Health care decision" means any decision made regarding the health care of the prospective donor.

(2) If a prospective donor WHO IS IN A HEALTH CARE FACILITY has a declaration or advance health care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor unless the declaration expressly provides to the contrary.

NEW SECTION. Section 14. Cooperation between coroner, medical examiner, county attorney, and procurement organization. (1) A county coroner, medical examiner, or associate medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(2) If a coroner, medical examiner, or associate medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner, medical examiner, or county attorney and a postmortem examination is going to be performed, unless the coroner, medical examiner, or county attorney denies recovery in accordance with [section 15], the coroner, medical examiner, or designee shall conduct a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

(3) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of a coroner or medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or medical examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or medical examiner.

NEW SECTION. Section 15. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner, medical examiner, or county attorney. (1) Upon request of a procurement organization, a county coroner, medical examiner, or associate medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner or medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or medical examiner shall release postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the coroner or medical examiner only if relevant to transplantation or therapy.

(2) The coroner or medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the coroner's or medical examiner's jurisdiction and that the coroner or medical examiner determines may be relevant to the investigation.

(3) A person that has any information requested by a coroner or medical examiner pursuant to

subsection (2) shall provide that information as expeditiously as possible to allow the coroner or medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(4) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of a coroner or medical examiner and a postmortem examination is not required or if the coroner or medical examiner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner or medical examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(5) If an anatomical gift of a part from the decedent under the jurisdiction of a coroner, medical examiner, or county attorney has been or might be made but the coroner, medical examiner, or county attorney initially believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death, the coroner, medical examiner, or county attorney shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. After consultation, the coroner, medical examiner, or county attorney may allow the recovery.

(6) Following the consultation under subsection (5), in the absence of mutually agreed-upon protocols to resolve conflict between a coroner, medical examiner, or county attorney and the procurement organization, if the coroner, medical examiner, or county attorney intends to deny recovery, the coroner, medical examiner, county attorney, or designee, at the request of the procurement organization, shall attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part. During the removal procedure, the coroner, medical examiner, county attorney, or designee may allow recovery by the procurement organization to proceed, or, if the coroner, medical examiner, county attorney, or designee reasonably believes that the part may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.

(7) If the coroner, medical examiner, county attorney, or designee denies recovery under subsection (6), the person denying recovery shall:

- (a) explain in a record the specific reasons for not allowing recovery of the part;
- (b) include the specific reasons in the records of the coroner or medical examiner; and
- (c) provide a record with the specific reasons to the procurement organization.

(8) If a coroner, medical examiner, county attorney, or designee allows recovery of a part under subsection (4), (5), or (6), the procurement organization, upon request, shall cause the physician or technician

who removes the part to provide the requestor with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.

(9) If a coroner, medical examiner, county attorney, or designee is required to be present at a removal procedure under subsection (6), upon request the procurement organization requesting the recovery of the part shall reimburse the coroner, medical examiner, county attorney, or designee for the additional costs incurred in complying with subsection (6).

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

"72-17-301. Rights and duties at death. (1) ~~Rights~~ Subject to 72-17-202 and [section 15], the rights of a donee created by an anatomical gift are superior to rights of others under 72-17-214(1), except with respect to autopsies. A donee may accept or reject an anatomical gift. If the donee accepts an anatomical gift of the entire body, the donee, subject to the terms of the gift and this chapter, may allow embalming, burial, or cremation and the use of the body in funeral services. If the anatomical gift is of a part of the body, the donee, upon the death of the donor and before embalming, burial, or cremation 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 person under obligation to dispose of the body.

(2) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician ~~or~~ surgeon, OR CORONER who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician ~~or~~ surgeon, OR CORONER who determines the time of death 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)~~(5).

(3) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under 72-17-202 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(4) Unless prohibited by law other than this chapter, an examination under 72-17-213(2)(c) or subsection (3) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(5) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(6) Upon referral by a hospital under 72-17-213(2), a procurement organization shall make a reasonable

search for any person listed in 72-17-214 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

~~(3)(7)~~ 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."

NEW SECTION. Section 17. False acts concerning document of gift -- penalty. Any person that knowingly falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal in order to obtain a financial gain commits 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 18. Relation to Electronic Signatures in Global and National Commerce Act. [This act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

NEW SECTION. Section 19. Codification instruction. [Sections 13 through 15 and 17] 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 13 through 15 and 17].

NEW SECTION. Section 20. Applicability. [This act] applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift made before October 1, 2007.

- END -

