

SENATE BILL NO. 154

INTRODUCED BY D. EMRICH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROHIBITION ON THE SALE OR PURCHASE OF HUMAN BODY PARTS UNDER THE REVISED UNIFORM ANATOMICAL GIFT ACT; PROHIBITING THE SALE OR PURCHASE OF WHOLE HUMAN BODIES; REVISING DEFINITIONS; AMENDING SECTIONS 72-17-102 AND 72-17-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. 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.

(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.

(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.

(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.

(7) "Document of gift" means any of the following methods used to make an anatomical gift:

(a) a card;

(b) a statement attached to or imprinted on a driver's license, identification card, or donor registry;

(c) a will or other writing; or

(d) a witnessed oral statement.

(8) "Donor" means an individual 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 any state or federal authority to operate a vehicle, whether or not conditions are attached to the license or permit.

(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.

(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) "Human fetal tissue" means tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion or after a stillbirth.

~~(15)(16)~~ "Identification card" means an identification card issued by the department of justice.

~~(16)(17)~~ "Know" means to have actual knowledge.

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

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

(19)(20)"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)(21)"Parent" means a parent whose parental rights have not been terminated.

(24)(22)(a) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body. The term includes human fetal tissue.

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

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

(23)(24)"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.

(24)(25)"Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(25)(26)(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)(27)"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)(28)"Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(28)(29)"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)(30)"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)(31)"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.

~~(31)~~(32)"State" means a state, territory, or possession of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(32)~~(33)"Technician" means an individual who is certified by the state board of medical examiners to remove or process a part.

~~(33)~~(34)"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)~~(35)"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)~~(36)"Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients."

Section 2. Section 72-17-302, MCA, is amended to read:

"72-17-302. Sale or purchase of parts and whole bodies prohibited. (1) A person may not knowingly, for valuable consideration:

(a) purchase or sell a part for:

(i) transplantation or therapy, if removal of the part is intended to occur after the death of the decedent; or

(ii) research, education, or the training of search and rescue canines; or

(b) purchase or sell a whole body for transplantation, therapy, research, education, or the training of search and rescue canines.

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

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

1 NEW SECTION. **Section 3.** **Effective date.** [This act] is effective on passage and approval.

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