

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 (New Draft of H.P. 1282, L.D. 1799)  
3 SECOND REGULAR SESSION  
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5 ONE HUNDRED AND TWELFTH LEGISLATURE  
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7 Legislative Document

No. 2036

9 H.P. 1444

House of Representatives, February 21, 1986

10 Reported by Representative Pines from the Committee on Human  
11 Resources and printed under Joint Rule 2. Original bill sponsored by  
12 Representative Nelson of Portland. Cosponsored by Senator Clark of  
Cumberland.

EDWIN H. PERT, Clerk

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14 STATE OF MAINE  
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16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-SIX  
18

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19 AN ACT Concerning Required Request for Organ  
20 Donation.  
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22 **Emergency preamble.** Whereas, Acts of the Legis-  
23 lature do not become effective until 90 days after  
24 adjournment unless enacted as emergencies; and

25 Whereas, tens of thousands of people in the State  
26 and across the country are waiting for organ and tis-  
27 sue transplants; and

28 Whereas, these transplants can make the differ-  
29 ence between life and death for some and between a  
30 life of pain and a full, productive life for others;  
31 and

32 Whereas, according to a recent Gallup Poll, 72%  
33 of Americans would consent to the donation of a de-  
34 ceased loved one's organs if asked, but only 10% of  
35 potential donors became donors; and

1           Whereas, the one-year success rate for organ and  
2 tissue transplants is high and is increasing each  
3 year; and

4           Whereas, this bill provides a sensitive,  
5 compassionate method to require the request of organ  
6 donations in certain instances and this request will  
7 increase the number of people who will receive organ  
8 and tissue transplants and thus increase the number  
9 of people who can live a productive life without pain  
10 and will decrease the needless deaths caused by lack  
11 of a donated organ, the gift of life; and

12           Whereas, the sooner this bill is implemented, the  
13 sooner needless pain and suffering and needless death  
14 can be alleviated; and

15           Whereas, in the judgment of the Legislature,  
16 these facts create an emergency within the meaning of  
17 the Constitution of Maine and require the following  
18 legislation as immediately necessary for the preser-  
19 vation of the public peace, health and safety; now,  
20 therefore,

21 Be it enacted by the People of the State of Maine as  
22 follows:

23           Sec. 1. 22 MRSA §2904, sub-§5, as enacted by PL  
24 1969, c. 193, is amended to read:

25           5. How made. Any gift by a person designated in  
26 section 2902, subsection 2 shall be made by a docu-  
27 ment signed by him, or made by his telegraphic, re-  
28 corded telephonic or other recorded message.

29           This subsection includes, but is not limited to,  
30 gifts made pursuant to section 2910. Any gift pursu-  
31 ant to section 2910, by a person designated in sec-  
32 tion 2902, subsection 2, shall be made by a document  
33 signed by him, by a telegraphic, recorded telephonic  
34 or other recorded message, or by a telephonic message  
35 witnessed by at least 2 people in which case the wit-  
36 nesses shall document the telephonic message in writ-  
37 ing.

1           Sec. 2. 22 MRSA §2907, sub-§4, as enacted by PL  
2 1969, c. 193, is repealed and the following enacted  
3 in its place:

4           4. Applicability of other laws. This chapter is  
5 subject to the laws of this State prescribing powers  
6 and duties with respect to autopsies and to the pro-  
7 visions of chapter 711, the Medical Examiner Act.

8           Sec. 3. 22 MRSA §2910 is enacted to read:

9           §2910. Request for consent required to an anatomical  
10 gift

11           1. Request for consent required. When a death  
12 occurs in a hospital, a request for consent to an an-  
13 atomical gift shall be made in accordance with the  
14 following provisions.

15           A. Where, based upon accepted medical standards,  
16 a decedent who has not made an anatomical gift is  
17 a suitable candidate for organ or tissue dona-  
18 tion, the attending physician, or if he is un-  
19 available or if he made the determination of  
20 death, the hospital administrator, or his desig-  
21 nated representative, shall at the time of death  
22 request the person designated in section 2902,  
23 subsection 2, to consent to the gift of all or  
24 any part of the decedent's body as an anatomical  
25 gift for any or all of the purposes expressed in  
26 section 2903. This request is subject to all the  
27 provisions of this chapter.

28           B. Persons who will make requests for anatomical  
29 gifts shall be given training in the appropriate  
30 procedures for making the request. A person who  
31 determined the death of the decedent may not make  
32 the request for that decedent.

33           2. Medical records. When a request for an ana-  
34 tomical gift is made pursuant to this section, the  
35 request and its disposition shall be noted in the de-  
36 cedent's medical record.

37           3. Interhospital agreements. Hospitals shall  
38 develop and implement interhospital agreements among  
39 themselves which establish protocols for the retriev-

1 al and transportation of all or any part of a body  
2 found suitable for transplantation and for the costs  
3 associated with transplantation.

4 4. Annual reports. Hospitals shall report annu-  
5 ally to the commissioner the number of requests for  
6 anatomical gifts made and the number of organs re-  
7 trieved pursuant to this section and the overall im-  
8 act of this section. This report shall not contain  
9 any information which can identify the decedents or  
10 any person to whom a request for an anatomical gift  
11 was made.

12 5. Rules. The commissioner shall establish  
13 rules concerning the training of persons who will  
14 perform the request for an anatomical gift pursuant  
15 to this section and may establish other rules neces-  
16 sary to implement this section. The commissioner  
17 shall appoint a committee of medical and hospital  
18 representatives to make recommendations regarding  
19 rules concerning the interhospital agreements pursu-  
20 ant to subsection 3.

21 Emergency clause. In view of the emergency cited  
22 in the preamble, this Act shall take effect when ap-  
23 proved.

24 STATEMENT OF FACT

25 This new draft replaces the original bill. It  
26 still requires that a request be made to families or  
27 the legal representative for organ donations when  
28 someone dies in a hospital. In addition, the new  
29 draft:

30 1. Incorporates the request for anatomical gift  
31 into the Anatomical Gift Act, including:

32 A. Immunity for good faith actions while imple-  
33 menting the law; and

34 B. The requirement for written documentation of  
35 the request or a witnessed phone call;

1           2. Limits requests for donations to those in-  
2           stances where the decedent has not made a contrary  
3           intention known or where the donor is medically suit-  
4           able;

5           3. Specifies that the attending physician shall  
6           make the request unless he or she is unavailable or  
7           made the determination of death;

8           4. Eliminates the use of the death certificate  
9           for reporting purposes;

10          5. Requires annual reports to the Commissioner  
11          of Human Services;

12          6. Cross-references the applicability of the  
13          Medical Examiner Act, which may affect the availabil-  
14          ity of the organs or tissues in medical examiner  
15          cases;

16          7. Adds language to ensure that the  
17          inter-hospital agreements include protocols for the  
18          costs associated with transplantation; and

19          8. Adds an emergency preamble and clause to en-  
20          sure minimum delay in increasing the availability of  
21          organs and tissue for transplantation.

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