

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 257

H.P. 212

House of Representatives, January 23, 2003

An Act To Honor the Intent of Organ Donors

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FAIRCLOTH of Bangor.
Cosponsored by Senator PENDLETON of Cumberland and
Representatives: CURLEY of Scarborough, KANE of Saco, MARRACHÉ of Waterville,
SUSLOVIC of Portland, WALCOTT of Lewiston, Senators: BENNETT of Oxford,
BRENNAN of Cumberland.

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

Sec. 1. 18-A MRSA §5-816-A is enacted to read:

§5-816-A. Registration

Beginning January 1, 2004 a person who possesses an advance health care directive executed pursuant to this Part shall deliver the advance health care directive to the Maine Organ Donor Registry established pursuant to Title 29-A, section 1402-A, subsection 4, paragraph A. This section applies to persons executing an advance health care directive, attorneys, health care providers, surrogates and any other who possesses an advance health care directive executed by another person.

Sec. 2. 20-A MRSA §8702, sub-§1 is enacted to read:

1. Curriculum beginning January 1, 2004. The driver education course curriculum must include a short segment on organ and tissue donation, including at a minimum the following information:

A. A statement that it is the policy of the State to provide information regarding the opportunity to save lives through organ and tissue donation; and

B. Requirements for indicating the intention to donate.

Sec. 3. 22 MRSA §2911 is enacted to read:

§2911. Honor intent of organ donors

1. General rule. The intention of a person to make a donation of that person's own body organ or tissue after death must be honored. In the absence of a written statement overriding donor intent in accordance with subsection 2, or revocation or amendment of the donor's execution of the intent to donate under section 2906, Title 18-A, Article 5, Part 8 or Title 29-A, section 1402-A, health care providers licensed in this State and federally designated organ procurement organizations shall act in accordance with the donor's intention and may take appropriate actions to effect the gift.

2. Overriding donor intent. Next of kin to a person who has expressed intent to donate that person's own body organ or tissue after death may override the intention of the donor in accordance with this subsection by executing a written statement, witnessed by 2 persons who are not relatives of the donor, indicating awareness of the expressed intention of the donor. The written statement must indicate that the signer has discussed

2 with personnel at a hospital licensed in this State these
3 provisions concerning honoring the intent of organ donors and
4 include:

5 A. An indication that the donor revoked or altered the
6 statement of intent to donate, as provided in section 2906
7 or Title 18-A, Article 5, Part 8. Next of kin acting under
8 this paragraph shall provide evidence of revocation or
9 alteration by the donor after the date of the donor's
10 expressing a willingness or intention to donate; or

11 B. An indication of the decision of the signer to override
12 the expressed intention of the donor.

13 If more than one person qualifies as next of kin and also
14 qualifies to execute an anatomical gift of all or part of the
15 decedent's body under this chapter or any other provision of law,
16 the document used to override donor intent must show the
17 agreement of a majority of those persons at the level of priority
18 of the signer under Title 18-A, section 5-805 or Title 22,
19 section 2902, subsection 2.

20 **Sec. 4. 26 MRSA §979-D, sub-§1, ¶E,** as amended by PL 1997, c.
21 741, §6 and affected by §12, is further amended by amending
22 subparagraph (1), division (c) to read:

23 (c) Use of vacation or sick leave, or both.
24 Public employees who donate bone marrow are
25 eligible for 7 days of administrative leave for
26 that purpose, and public employees who donate
27 other tissues or organs are eligible for 30 days
28 of administrative leave for that purpose.
29 Administrative leave granted under this division
30 may be used before sick leave and is in addition
31 to any sick leave to which the employee is
32 entitled;

33 **Sec. 5. 29-A MRSA §1301, sub-§8** is enacted to read:

34 **8. Organ and tissue donation.** This subsection applies to
35 organ donation under section 1402-A.

36 A. Before issuing or renewing a driver's license, the
37 Secretary of State shall read to the applicant a short
38 statement on the opportunity to save a life through organ
39 and tissue donation and shall provide the applicant an
40 opportunity to become an organ or tissue donor. The
41 applicant must be given a form on which to indicate whether
42 the applicant intends to become a donor.

2 B. Information regarding the opportunity to save a life
3 through organ and tissue donation must be prominently
4 displayed on driver's license information mailed to
5 applicants or distributed at offices of the bureau and must
6 be prominently displayed on posters in offices of the bureau.

7 **Sec. 6. 29-A MRSA §1354, sub-§6, ¶B,** as enacted by PL 1995, c.
8 505, §15 and affected by §22, is amended to read:

9 B. The Secretary of State shall develop and implement a
10 standardized driver education curriculum that establishes
11 minimum standards for instructional goals and learning
12 objectives. Beginning January 1, 2004, the standardized
13 driver education curriculum must include a 30-minute segment
14 on organ and tissue donation and transplantation.

15 **Sec. 7. 29-A MRSA §1402-A, sub-§§4, 5 and 6** are enacted to read:

16 **4. Anatomical gift coordination.** In order to coordinate
17 the donation of anatomical gifts and the receipt and
18 transplantation of organs and tissues, the Secretary of State
19 shall perform the following duties.

20 A. The Secretary of State shall modify its existing
21 database system to maintain the Maine Organ Donor Registry,
22 referred to in this section as "the registry." The
23 Secretary of State shall include information on donors who
24 have previously indicated their intention to donate through
25 the office of the Secretary of State, those who indicate
26 their intent to donate under this section, an advance health
27 care directive pursuant to Title 18-A, Article 5, Part 8,
28 the Uniform Anatomical Gift Act pursuant to Title 22,
29 chapter 710 or any other method that clearly indicates the
30 intent of an adult donor to make an anatomical gift upon the
31 occurrence of death.

32 B. The Secretary of State shall establish a volunteer
33 advisory committee to provide advice and information
34 regarding anatomical gifts, public information programs and
35 donor recognition programs.

36 C. Information maintained in the registry must be made
37 available through a publically accessible site on the
38 Internet, designed to guard donor and family privacy, to
39 federally designated organ procurement organizations as
40 necessary for the coordination of receipt of anatomical
41 gifts and coordination of transplantation of organs and
42 tissues.

D. The Secretary of State shall invite each hospital in the State to nominate individual donors or families for a "Gift of Life" award. The Secretary of State shall forward the names of 5 persons to the Governor each year for commendation through the "Gift of Life" award for their generosity and humanitarian spirit.

E. Notwithstanding Title 22, section 1711-C and any other provision of law to the contrary, a health care provider licensed in this State to provide primary health care shall provide information to a federally designated organ procurement organization regarding a patient who has indicated a willingness to become an organ donor under this section, Title 18-A, Article 5, Part 8 or Title 22, chapter 710 if such information is provided in accordance with professional standards applicable to organ donation and if donor intent has not been overridden pursuant to Title 22, section 2911, subsection 2.

5. Effect. An expression of willingness to make an anatomical gift under this section has the same effect as a designation under Title 18-A, Article 5, Part 8 or Title 22, chapter 710. Revocation or suspension of the right to drive under this chapter does not affect the expressed willingness of a person to make an anatomical gift under this section.

6. Rulemaking. The Secretary of State shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 8. Effective date. This Act takes effect January 1, 2004.

SUMMARY

This bill addresses organ and tissue donation and transplantation. It adds a short segment on organ and tissue donation and transplantation to the driver's education curriculum and directs the Secretary of State's office to read to applicants for driver's licenses a short statement on organ and tissue donation and to provide an opportunity for the applicant to become a donor. It directs the Secretary of State to modify its existing database system to maintain the Maine Organ Donor Registry, to establish a volunteer advisory committee and to make registry information available to federally designated organ procurement organizations. The bill requires persons in possession of an advance health care directive to submit the directive to the Maine Organ Donor Registry. It provides

2 rule-making authority for the Secretary of State. The bill
contains the honor-the-intent law, a provision to make clear that
4 donor-expressed intent takes precedence, and specifies the
procedures under which a next of kin may override donor intent.
6 The bill provides that public employees who donate bone marrow
are eligible for 7 days of administrative leave for that purpose
and public employees who are donors of other tissues and organs
8 are eligible for 30 days of administrative leave for that
purpose. This administrative leave is in addition to any sick
10 leave to which the employee is entitled. The bill contains an
effective date of January 1, 2004.